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# Country report

## Non-discrimination

Latvia

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# **Country report**

# **Non-discrimination**

# **Latvia**

Anhelita Kamenska

Reporting period 1 January 2017 – 31 December 2017

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## EXECUTIVE SUMMARY

### 1. Introduction

Latvia is a multi-ethnic country, although the proportion of the different ethnic groups among its population has varied. Ethnic origin is recorded in the population register. It is based on the ethnicity of either of a person's parents and can be changed upon reaching the age of majority by choosing the ethnicity of any grandparents. The entry of ethnicity in passports is optional. In 2011, of a population of 2 067 887, 62.1 % were Latvians, 26.9 % Russians, 3.3 % Belarusians, 2.2 % Ukrainians, 2.2 % Poles; 1.2 % Lithuanians, 0.3 % Jewish, 0.1 % Estonians, 0.3 % Roma, 0.1 % Germans, and 1.3 % others.<sup>1</sup>

Latvian citizens number 1 784 285 or 84.55 % of the population; of these, ethnic Latvians constitute 71.08 %, while the remaining citizens are representatives of different minorities and 11.06 % or 233 393 inhabitants are non-citizens,<sup>2</sup> of which ethnic Russians are the largest group. Therefore, issues relating to non-citizens are often treated as mainly concerning Russians or Russian-speakers, and the rights of citizens and non-citizens, as well as linguistic issues, remain sensitive. There are over 73 000 third country nationals, of which the largest group are citizens of Russia (54 684), followed by Ukrainians (7 045), and Belarusians (3 194).<sup>3</sup>

The Roma population in Latvia is relatively small, at 7 193 (2017),<sup>4</sup> although it is higher according to data from Roma associations.<sup>5</sup> In a 2015 survey, 82.3 % of Roma alleged that they or their relatives had been refused work due to their ethnic origin.<sup>6</sup> There are no longer separate Roma classes in Latvia in 2016. Nevertheless, the share of Roma children attending special schools – 34 % in 2016/2017 – is disproportionately high, and has increased by 7 % compared to 2013/2014.<sup>7</sup>

According to the study 'Attitude towards the Elderly and their Discrimination on the Latvian Labour Market', people over 40-45 experience discrimination because of their age in the Latvian labour market. The difficulties of disabled persons in finding employment are also common knowledge, although there are no sufficiently representative studies to confirm this.

There have been no recent relevant studies or reports regarding ethnic minorities or discrimination on the ground of racial or ethnic origin. The most recent study was published in 2010: 'Ethnic Minorities in the Latvian Labour Market, 1997–2009: Outcomes, Integration Drivers and Barriers'.

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<sup>1</sup> 2011 Population Census.

<sup>2</sup> Non-citizens are a special category of people - former USSR citizens who were resident in Latvia on 1 July 1991 and who have not obtained citizenship of any other country, thus this term does not encompass foreign citizens and stateless persons. Data concerning citizenship are as of 01.01.2015.

<sup>3</sup> Data concerning citizenship are as of 01.01.2015.

<sup>4</sup> Office of Citizenship and Migration Affairs, Statistics of the Population Register (01.01.2018) Latvian population breakdown by nationality and ethnic affiliation, available at: [http://www.pmlp.gov.lv/lv/assets/documents/1aaaa/ISVN\\_Latvija\\_pec\\_TTB\\_VPD.pdf](http://www.pmlp.gov.lv/lv/assets/documents/1aaaa/ISVN_Latvija_pec_TTB_VPD.pdf).

<sup>5</sup> Latvijas Fakti Market and Social Research Centre (2015), Roma in Latvia (*Romi Latvijā*). p 44. The research was conducted under the project 'Different people. Diverse experience. One Latvia II', No. JUST/2013/PROG/AG/4978/AD, p.5. Available at: [http://ec.europa.eu/justice/newsroom/files/summaries\\_selected\\_2013\\_ag\\_prog\\_ad\\_en.pdf](http://ec.europa.eu/justice/newsroom/files/summaries_selected_2013_ag_prog_ad_en.pdf).

<sup>6</sup> Tīrgus un sociālo pētījumu centrs "Latvijas Fakti" (2015), *Romi Latvijā. Pētījuma ziņojums 2015*, p. 61, in Latvian at file [https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas\\_integracija/Romi/Papildu/romi\\_latvija\\_petijums\\_LV.pdf](https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas_integracija/Romi/Papildu/romi_latvija_petijums_LV.pdf).

<sup>7</sup> Ministry of Culture (2014) *Informative Report on the Implementation of Roma Integration Policy Measures (Informatīvais ziņojums par romu integrācijas politikas pasākumu īstenošanu Latvijā)*, 12. lpp, at [https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas\\_integracija/Romi/Dokumenti/Info-zinojumi2014\\_230315.pdf](https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas_integracija/Romi/Dokumenti/Info-zinojumi2014_230315.pdf).

There is little documented evidence about the difficulties encountered by sexual minorities, most probably due to the fact that many of them are forced to conceal their sexual orientation as a result of the negative attitudes commonly found in Latvian society.

The only consultations with NGOs taking place on a regular basis are those addressing issues of disability and gender. While a framework for dialogue with social partners also exists, the issue of discrimination has still only been addressed to a limited extent, and mostly on gender issues. There is very little public debate, and it has largely concentrated on issues of Russian-speakers and related issues, as well as in connection with Gay Pride events – the sexual orientation issue.

Since the transposition of the anti-discrimination directives and the closure of the Secretariat of the Special Assignments Minister for Integration Affairs, there has been no national authority co-ordinating issues related to non-discrimination.

The only group that is being specifically targeted to some extent is that of disabled people, where the law is attempting to provide some financial incentive to employers to employ them. There is no provision on possible positive action anywhere in Latvian legislation.

## 2. Main legislation

The cornerstone of the prohibition of discrimination is Article 91 of the Latvian Constitution,<sup>8</sup> which provides, inter alia, that human rights shall be observed without discrimination of any kind. Thus, the Constitution outlaws all discrimination, but does not expressly state the grounds on which discrimination is prohibited. The Constitution is regarded as having direct effect, that is, it directly binds all public bodies, but it does not have horizontal effect. This means that, while discrimination is illegal in the public sector even without any further laws, which are thus only needed to provide for sanctions and the enforcement of the principle of non-discrimination, in the private sector the introduction of special laws to outlaw discrimination is essential. The same applies to international treaties: the treaties binding on Latvia only bind public bodies.

Apart from Protocol No. 12 to the European Convention on Human Rights,<sup>9</sup> which the country has signed but not ratified yet, Latvia is a party to most of the important international agreements relevant for counteracting discrimination, such as the International Covenant on Civil and Political Rights,<sup>10</sup> the Optional Protocol to the Covenant,<sup>11</sup> the Covenant on Economic, Social and Cultural Rights,<sup>12</sup> the Convention on the Elimination of All Forms of Racial Discrimination,<sup>13</sup> the Framework Convention on the Protection of National Minorities,<sup>14</sup> the Convention of the Rights of the Child,<sup>15</sup> the UN Convention on the Rights of Persons with Disabilities,<sup>16</sup> and the Revised European Social Charter.<sup>17</sup> The Latvian Government has not recognised the competence of the Committee on the Elimination of Racial Discrimination, however. These ratified instruments constitute

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<sup>8</sup> Latvia, Constitution (*Satversme*), 15.02.1922.

<sup>9</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 04.11.1950, ETS 5.

<sup>10</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16.12.1966, United Nations, Treaty Series, vol. 999.

<sup>11</sup> UN General Assembly, *Optional Protocol to the International Covenant on Civil and Political Rights*, 19.12.1966, United Nations, Treaty Series, vol. 999.

<sup>12</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16.12.1966, United Nations, Treaty Series, vol. 993.

<sup>13</sup> UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21.12.1965, United Nations, Treaty Series, vol. 660.

<sup>14</sup> Council of Europe, *Framework Convention for the Protection of National Minorities*, 01.02.1995, ETS 157.

<sup>15</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577.

<sup>16</sup> UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24.01.2007, A/RES/61/106.

<sup>17</sup> Council of Europe, *European Social Charter (Revised)*, 03.05.1996, ETS 163.



part of the domestic legal order, having been promulgated in the *Official Journal*, and they can be applied directly by domestic courts, unless their application depends on the enactment of a statute.

Anti-discrimination law is fragmented in Latvia: there is no one single comprehensive law. However, coverage has improved due to the adoption of amendments to existing laws. The main problem is that, since discrimination is not outlawed in the private sector unless expressly provided for by statute and, even though it is outlawed in the public sector due to the supremacy of the Constitution, the absence of a specific implementing law considerably complicates enforcement of the prohibition.

The most comprehensive prohibition is found in the Labour Law<sup>18</sup> adopted in 2001, which was subsequently amended to address the remaining gaps. This law prohibits discrimination in the employment relationships that it covers and, since November 2006, its non-discrimination provisions have applied to state civil service relationships.

The Labour Law and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators<sup>19</sup> are the only laws to include sexual orientation as a prohibited ground. The Labour Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Social Security<sup>20</sup> and the Consumer Rights Protection Law, are the four laws that expressly refer to disability. The four laws that refer to age as a prohibited ground of discrimination include the Labour Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Social Security and the Law on Patients' Rights.

A number of other laws contain non-discrimination clauses with exhaustive or open lists of prohibited grounds of discrimination, which never include all the grounds covered by the directives. The Law on Education contains a closed list limited to 'property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence'. Some laws do not contain any anti-discrimination clauses, for example the Law on Housing, although housing issues come under the amended Consumer Rights Protection Law.

Criminal Law prohibits hate crimes/incitement to hatred on grounds of gender, age, disability and other circumstances, along with the prohibition of racially and religiously motivated crimes.<sup>21</sup> Sexual orientation is not expressly mentioned.

The main problem with Latvian anti-discrimination legislation is the patchy nature of the regulations, from which most other problems arise. Generally, all of the required fields are covered, although within those fields not all of the required grounds are covered.

### **3. Main principles and definitions**

The Labour Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Social Security,<sup>22</sup> the Law on Support to Unemployed Persons and Job Seekers<sup>23</sup> and the Consumer Rights Protection Law<sup>24</sup> contain definitions of direct and indirect discrimination and harassment which comply with the directives; they also prohibit instruction to discriminate. Protection against victimisation exists in the framework of the Labour Law, the Consumer Rights Protection Law, the Law on Support to Unemployed

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<sup>18</sup> Latvia, Labour Law (*Darba likums*), 12.06.2001.

<sup>19</sup> Latvia, Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (*Fizisko personu – saimnieciskās darbības veicēju diskriminācijas aizlieguma likums*), 19.12.2012.

<sup>20</sup> Latvia, Law on Social Security (*likums 'Par sociālo drošību'*), 07.09.1995.

<sup>21</sup> Latvia, Criminal Law (*Krimināllikums*), 17.06.1998.

<sup>22</sup> The old definition of indirect discrimination narrowing to comparable situations remains in the law.

<sup>23</sup> Latvia, Law on Support to Unemployed Persons and Job Seekers (*Bezdarbnieku un darba meklētāju atbalsta likums*), 09.05.2002.

<sup>24</sup> Latvia, Consumer Rights Protection Law (*Patērētāju tiesību aizsardzības likums*), 18.03.1999.

Persons and Job Seekers, the Law on Social Security, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators and the Education Law,<sup>25</sup> and in connection with complaints to the Ombudsman's Office.

The law is silent on the issue of discrimination by association or on presumed grounds or characteristics; the wording of the anti-discrimination provisions in Latvian laws referring to a person's (meaning the person who is invoking the provision) race, religious conviction etc. certainly make it easier to address discrimination based on assumed characteristics than based on association. However, in the absence of relevant case law testing these two issues, the only thing that can be said with certainty is that the law contains no express prohibitions.

The grounds for discrimination are not defined either in the Labour Law or elsewhere, and there is concern that disability might be interpreted narrowly compared with under the UN Convention on the Rights of Persons with Disabilities, using the technical meaning of this term, i.e. relying on formal recognition of a person's diminished ability to work and excluding de facto disability.

The Labour Law is the only law providing for justification of differential treatment on different grounds in relation to genuine occupational requirement.

Provisions relating to exceptions in other laws ('differential treatment associated with any of the grounds shall only be acceptable in such cases if such treatment is objectively justified with a legitimate purpose, for the achievement of which the selected means are proportionate') such as the Law on Social Security, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Support to Unemployed Persons and Job Seekers, the Education Law and the Consumer Rights Protection Law do not distinguish between direct and indirect discrimination, nor do they distinguish between the grounds covered by the directives and other grounds for differential treatment. The amendments to the laws concerning discrimination (including direct discrimination) have been adopted with the purpose of transposing the directives into national law but, in separate instances, they lack sufficient precision. In such cases it remains for the courts to consult the text of the directives. Additionally, the Labour Law provides for an exemption for employment by religious organisations, which, on the face of it, is broader than the one provided for by the directive. The Labour Law sets out the obligation of the employer to provide reasonable accommodation for disabled people. There are no rules on multiple discrimination.

#### **4. Material scope**

The Labour Law provides protection against all forms of discrimination (direct, indirect, harassment, instruction to discriminate and victimisation) in all aspects of employment relationships and in both the public and private sectors, including state civil service relationships (but excluding military service) and contract work carried out by self-employed persons. This includes the establishment of such relationships and concerns, inter alia, gender, race, age, disability, religion and sexual orientation.<sup>26</sup>

Access to vocational guidance and training, as well as issues of education in both the public and private sectors, are covered by the Labour Law, which refers to 'occupational training', and by the Law on Education,<sup>27</sup> which also applies to both the public and private sectors. The problem with the latter law, however, is that it contains an exhaustive list of grounds which does not include age, disability (although it could be argued that this can be

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<sup>25</sup> Latvia, Education Law (*Izglītības likums*), 29.09.1998.

<sup>26</sup> The complete list includes 'race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances'.

<sup>27</sup> Listing 'property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence' as prohibited grounds.

subsumed under the 'health' heading) or sexual orientation. Education and training could also come under the Consumer Rights Protection Law, but the list of its prohibited grounds is limited to gender, race, ethnic origin and disability. The Law on Support to Unemployed Persons and Job Seekers, which covers retraining, prohibits discrimination on the grounds of gender, race and ethnic origin.

The respective laws on membership of and involvement in organisations of workers or employers or in professional organisations do not always contain anti-discrimination clauses; whereas the provisions of the Labour Law apply in relation to the first of these two, professional organisations remain problematic and are not covered. The field of social protection, including social security and healthcare, is covered by the Law on Social Security, which lists age and disability,<sup>28</sup> although it does not contain express reference to sexual orientation. This law defines social services as those provided by the state or municipality, hence it does not apply to the private sector.

Access to goods and services is covered by the Consumer Rights Protection Law. Its list of prohibited grounds is limited to gender, race, ethnic origin and disability, which is not contrary to the directives as such.

## 5. Enforcing the law

There are a number of legal avenues for addressing cases of discrimination:

- Courts of general jurisdiction;
- Constitutional Court - legislation which is allegedly discriminatory on the grounds of age has twice been challenged in it;
- Possibility of submitting a complaint to the same public institution that has treated the person differently or to a higher institution;
- State Labour Inspectorate if discrimination has occurred within the framework of a labour relationship; the inspectorate can impose a fine;
- Ombudsman's Office, which is empowered to strive for an amicable settlement; it can file a complaint in an administrative court if it is in the public interest, or it can bring a case to the civil court if the issue concerns a violation of equal treatment.

The normal avenue for redress would be a court of general jurisdiction. A law on state-sponsored legal aid in civil cases<sup>29</sup> has been in force since 2005, yet its real impact has still to be evaluated. NGOs can submit a complaint or bring a case on behalf of natural persons who are the victims of discrimination. The Ombudsman's Office can also bring such a case. However, the amendments to the Civil Procedure Law adopted in December 2013 now restrict representation at cassation court level, including on discrimination matters, to victims and advocates only, and this excludes NGOs, the Ombudsman and other legal practitioners.

The provision on the shift in the burden of proof is included in the Labour Law, (employment), the Consumer Rights Protection Law and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (both these latter laws covering access to goods and services), as well as in Law on Education and the Law on Support to Unemployed Persons and Job Seekers.

On several occasions, the Supreme Court has criticised lower courts for failing to shift the burden of proof.<sup>30</sup> In cases coming under the Administrative Procedure Law, the exception of examination *ex officio* applies.

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<sup>28</sup> The list of prohibited grounds, with the exception of sexual orientation, is the same as in the Labour Law.

<sup>29</sup> State-sponsored legal aid in administrative cases was discontinued in 2009.

<sup>30</sup> Supreme Court Civil Case Department (*Augstākās tiesas Civillietu tiesu palāta*), *R. S. v. Rīga New St Gertrude Evangelical Lutheran Church* (*R.S. v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze*;

Latvian national law is silent on the issue of situation testing and the use of statistical evidence. There is no evidence of them being used and hence no case law.

The relatively low average compensations awarded in discrimination cases raises the issue of their proportionality, effectiveness and dissuasiveness. Moreover, the majority of court judgments are not publicly available. The provisions of the Criminal Law providing for penalties of up to three years' imprisonment have never been applied.

The majority of discrimination cases brought before the courts concern the area of employment, and predominantly relate to gender grounds. From 2005 to 2017 inclusive, in the known discrimination cases that resulted in a favourable outcome for the victim (of which there were over a dozen, 10 concerning discrimination on the ground of gender, three on disability,<sup>31</sup> one on ethnic origin,<sup>32</sup> and one on age,<sup>33</sup> the amounts awarded ranged from EUR 428<sup>34</sup> to EUR 7 142. The highest award was granted in a conciliation case, while the median moral compensation awarded has been EUR 1 500.

Since the ratification of the UN CRPD, several court cases have arisen in relation to the reasonable accommodation of persons with disability in the realm of social protection<sup>35</sup> and access to public buildings in relation to healthcare services.<sup>36</sup>

The Administrative Procedure Law provides for compensation for financial loss or personal harm, including moral harm, which has been caused to an individual by an administrative act or by the actual action of an institution. The Code of Administrative Offences provides for a fine ranging from EUR 140 to EUR 715 for violation of prohibition of discrimination. The State Labour Inspectorate has imposed sanctions predominantly in discriminatory job advertisement cases on grounds of gender, age or ethnicity. Sanctions have ranged from warnings to fines ranging from EUR 70 to EUR 535, but such small amounts cannot be considered dissuasive. The Supreme Court, in line with Court of Justice of the European Union jurisprudence, has clarified that there is no need to specifically prove the existence of moral damage in cases of discrimination, as moral damage is presumed from the very fact of discrimination in employment relationships.<sup>37</sup>

## 6. Equality bodies

Since March 2007, the tasks of the specialised body have been performed by the Ombudsman's Office, which is entrusted with the task of promoting the observance of human rights, including the promotion of equal treatment, without listing the grounds of discrimination and thus encompassing all of them. Its functions include inquiring into any individual complaint related to a human rights violation, starting investigations on its own initiative, analysing the observance of human rights and issuing surveys and reports. The office is entitled to review individual complaints, to acquire the necessary information and to strive for an amicable settlement. If this fails, the office can advise the parties of its opinion and proposals in the form of recommendations and can also present its suggestions and recommendations to the relevant institution or official; however, it cannot enforce its

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Supreme Court Senate, (*Latvijas Republikas Augstākās tiesa*) Case Nr. SKC-684/2012 (*E.L. v State Joint Stock Company International Airport Riga [E.L. v Valsts akciju sabiedrība „Starptautiskā lidosta Rīga”]*).

<sup>31</sup> Supreme Court Civil Case Department (*Augstākās tiesas Civillietu tiesu palāta*), *R. S. v. Riga New St Gertrude Evangelical Lutheran Church (R.S. v. Rīgas Jaunā Svētās Gertrūdes evaņģēliski luteriskā draudze)*, 11.04.2007; Kurzeme Regional Court (*Kurzemes apgabaltiesas Civillietu tiesas kolēģija*), case No. C40066110 (*V.Trusēvičs v. SIA Bio-Venta [Bio-Venta Ltd]*), 21.09.2011.

<sup>32</sup> Jelgava Court (*Jelgavas tiesa*), *S.Kozlovska v SIA Palso*, Case No C15066406, 25.05.2006.

<sup>33</sup> Supreme Court Senate (*Augstākās tiesas Senāts*), Case No C32276312 (SKC-1702/2013), 29.11.2013.

<sup>34</sup> Latvia switched to using the euro as its national currency, replacing the *lat* on 01.01.2014.

<sup>35</sup> Administrative Regional Court (*Administratīvā apgabaltiesa*), Case No A420528911, *B. v. State Social Insurance Agency (B.V. pret Valsts Sociālās apdrošināšanas aģentūru)*, 27.09.2013.

<sup>36</sup> Administrative District Court (*Administratīvā rajona tiesa*), Case No A420571712, 02.12.2013 Latvia, Supreme Court Civil Case Department (*Augstākās tiesas Civillietu tiesu palāta*), *R. S. v. Riga New St Gertrude Evangelical Lutheran Church (R.S. v. Rīgas Jaunā Svētās Gertrūdes evaņģēliski luteriskā draudze)*.

<sup>37</sup> Supreme Court Senate (*Augstākās tiesas Senāts*), Case No. C32276312 (SKC – 1702/2013), 29.11.2013.

recommendations, nor can it levy any fines. It has the right to bring a Constitutional Court case if the legislation does not comply with a norm of higher legal force. Likewise, it can file a complaint in an administrative court if this is in the public interest, or it can bring a case to the civil court if violation of equal treatment is at issue. It also provides legal advice to the victims and can help them to prepare a court case. The Ombudsman has never represented a client in a discrimination case in court, but it has facilitated the conclusion of two conciliation agreements.

The budget cuts during the economic crises inevitably affected the functioning of the body. In 2010 the budget of the office was cut by 57 % compared with 2008. This resulted in cuts to personnel. At different times, there have been one to three staff members specialising in non-discrimination issues in the office. In 2014, the Legal Equality Section comprised three members of staff.<sup>38</sup> In early 2015, the section was closed down, and the staff were assigned to other departments,<sup>39</sup> which raises concerns over whether the office fulfils the minimum requirements of the Racial Equality Directive in practice. In 2017, the office's budget was EUR 1 374 956.<sup>40</sup> There is no separate budget line for the equality and diversity function. Data on complaints about discrimination and their outcome are not publicly available, but are available upon request.

## **7. Key issues**

Differential treatment is not adequately prohibited in relation to vocational training outside employment relationships.

There continues to be no national co-ordination on non-discrimination issues. Since 2004, case law has remained limited concerning discrimination on grounds of race/ethnic origin (1), disability (3), age (2), religion (0), and sexual orientation (0).

The amendments to the Civil Procedure Law excluding NGOs from representing victims of discrimination at the instance of cassation contravene the non-regression clauses of the equality directives.

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<sup>38</sup> Although, since early 2015, the office has no longer had this section. See: Ombudsman (*LR Tiesībsargs*), 'Personnel', available in Latvian at <http://www.tiesibsargs.lv/lv/pages/par-mums>.

<sup>39</sup> LR Tiesībsargs (2015), 'Personnel', at <http://www.tiesibsargs.lv/en/pages/about-us/darbinieki>.

<sup>40</sup> Ministry of Finance (2017), 'Budget of the Office of the Ombudsman: Protection of human rights of private individuals', in Latvian at [http://fm.gov.lv/lv/sadalas/valsts\\_budzets/valsts\\_budzeta\\_vizualizacija/\\_budzets2017/tiesibsarga\\_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/](http://fm.gov.lv/lv/sadalas/valsts_budzets/valsts_budzeta_vizualizacija/_budzets2017/tiesibsarga_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/).

## RÉSUMÉ

### 1. Introduction

La Lettonie est un pays multiethnique, où la proportion des différents groupes ethniques formant la population a cependant varié avec le temps. L'origine ethnique est consignée dans le registre de l'état civil sur la base de l'origine ethnique des parents et peut être modifiée à l'âge de la majorité en choisissant l'origine ethnique des grands-parents. L'inscription de l'origine ethnique dans le passeport est facultative. En 2011, les 2 067 887 habitants se répartissaient comme suit: 62,1 % de Lettons, 26,9 % de Russes, 3,3 % de Biélorusses, 2,2 % d'Ukrainiens, 2,2 % de Polonais, 1,2 % de Lituanais, 0,3 % de Juifs, 0,1 % d'Estoniens, 0,3 % de Roms, 0,1 % d'Allemands et 1,3 % d'autres origines.<sup>41</sup>

Les citoyens lettons, au nombre de 1 784 285, représentent 84,55 % de la population, dont 71,08 % de Lettons de souche, les autres citoyens formant différentes minorités; le pays compte 11,06 % de non-ressortissants,<sup>42</sup> soit 233 393 habitants, parmi lesquels les Russes de souche constituent le groupe le plus important. Il en résulte que les questions relatives aux non-ressortissants sont souvent traitées comme des questions concernant principalement les Russes ou les russophones, et que les droits des ressortissants et des non-ressortissants, de même que les questions linguistiques, restent des sujets sensibles en Lettonie. La population compte plus de 73 000 ressortissants de pays tiers, parmi lesquels le groupe le plus important est formé de citoyens russes (54 684), suivis des Ukrainiens (7 045) et des Biélorusses (3 194).<sup>43</sup>

La population rom est relativement peu importante en Lettonie: elle comptait 7 193 personnes en 2017,<sup>44</sup> mais pourrait être plus nombreuse selon les données des associations roms.<sup>45</sup> Dans une enquête réalisée en 2015, 82,3 % des Roms ont affirmé qu'eux-mêmes ou leurs proches s'étaient vu refuser du travail en raison de leur origine ethnique.<sup>46</sup> Il n'existe plus, en 2016, de classes réservées aux élèves roms, mais il n'en reste pas moins que le pourcentage d'enfants roms suivant un enseignement spécial, à savoir 34 % en 2016/2017, est disproportionnellement élevé et s'est accru de 7 % par rapport à 2013/2014.<sup>47</sup>

Il ressort d'une étude consacrée à l'attitude envers les personnes âgées et la discrimination à leur égard sur le marché du travail letton que les personnes de plus de 40-45 ans se heurtent sur ce marché à une discrimination fondée sur leur âge. La difficulté rencontrée par les personnes handicapées pour trouver un emploi est également de notoriété publique, même si l'on ne dispose d'aucune étude suffisamment représentative pour le confirmer.

<sup>41</sup> Recensement démographique 2011.

<sup>42</sup> Les non-ressortissants forment une catégorie spéciale regroupant des ressortissants de l'ex-URSS qui résidaient en Lettonie au 1<sup>er</sup> juillet 1991 et n'ont obtenu la citoyenneté d'aucun autre pays; le terme n'englobe donc pas ici les ressortissants étrangers ni les personnes apatrides. Les données relatives à la citoyenneté reflètent la situation au 1<sup>er</sup> janvier 2015.

<sup>43</sup> Les données relatives à la citoyenneté reflètent la situation au 1<sup>er</sup> janvier 2015.

<sup>44</sup> Office de la citoyenneté et des migrations, Statistiques, Registre de la population (1<sup>er</sup> janvier 2018), Ventilation de la population lettone par nationalité et appartenance ethnique, disponible (en letton) sur: [http://www.pmlp.gov.lv/lv/assets/documents/1aaaa/ISVN\\_Latvija\\_pec\\_TTB\\_VPD.pdf](http://www.pmlp.gov.lv/lv/assets/documents/1aaaa/ISVN_Latvija_pec_TTB_VPD.pdf).

<sup>45</sup> Latvijas Fakti Market & Social Research Centre (2015), *Romi Latvijā* (Roms en Lettonie), p 44. Étude réalisée dans le cadre du projet «Different people. Diverse experience. One Latvia II», réf. JUST/2013/PROG/AG/4978/AD, p.5, disponible (en anglais) sur: [http://ec.europa.eu/justice/newsroom/files/summaries\\_selected\\_2013\\_ag\\_prog\\_ad\\_en.pdf](http://ec.europa.eu/justice/newsroom/files/summaries_selected_2013_ag_prog_ad_en.pdf).

<sup>46</sup> Tīrgus un sociālo pētījumu centrs «Latvijas Fakti» (2015). *Romi Latvijā. Pētījuma ziņojums 2015*, p. 61, disponible (en letton) sur: [https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas\\_integracija/Romi/Papildu/romi\\_latvija\\_petijums\\_LV.pdf](https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas_integracija/Romi/Papildu/romi_latvija_petijums_LV.pdf).

<sup>47</sup> Ministère de la Culture (2014), Rapport informatif sur la mise en œuvre des mesures en faveur de l'intégration des Roms (*Informatīvais ziņojums par romu integrācijas politikas pasākumu īstenošanu Latvijā*), 12. lpp, disponible (en letton) sur: [https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas\\_integracija/Romi/Dokumenti/Info-zinojumi2014\\_230315.pdf](https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas_integracija/Romi/Dokumenti/Info-zinojumi2014_230315.pdf).

Aucune étude ni rapport pertinent n'a été récemment réalisé(e) à propos des minorités ethniques ou de la discrimination fondée sur la race ou l'origine ethnique. La dernière étude en date a été publiée en 2010 sur le thème «Les minorités ethniques sur le marché du travail letton, 1997–2009: bilan, moteurs et freins de l'intégration».

On dispose de peu d'éléments de preuve circonstanciés concernant les difficultés rencontrées par les minorités sexuelles, en raison très probablement du fait que beaucoup de leurs membres n'ont d'autre choix que de dissimuler leur orientation sexuelle face aux attitudes négatives largement répandues au sein de la société lettone.

Les seules consultations régulières d'ONG concernent les questions relatives au handicap et au genre. S'il existe également un cadre de dialogue avec les partenaires sociaux, la question de la discrimination n'y a été abordée jusqu'ici que de façon restreinte et en rapport surtout avec le genre. Le débat public est très limité et se concentre principalement sur la problématique des russophones et les questions connexes, ainsi que sur la problématique de l'orientation sexuelle en rapport avec l'organisation de «Gay Prides».

Depuis la transposition des directives antidiscrimination et la fermeture du secrétariat du ministre chargé des affaires spéciales en matière d'intégration de la société, il n'y a plus d'autorité nationale assurant la coordination des questions relevant de la lutte contre la discrimination.

Le seul groupe spécifiquement ciblé est, dans une certaine mesure, celui des personnes handicapées puisqu'une loi s'efforce d'offrir des mesures d'incitation financière pour encourager les employeurs à les engager. On ne trouve nulle trace dans la législation lettone d'une disposition relative à d'éventuelles actions positives.

## 2. Législation principale

L'interdiction de discrimination a pour pierre angulaire l'article 91 de la Constitution lettone,<sup>48</sup> qui prévoit notamment que les droits de l'homme seront observés sans discrimination d'aucune sorte. Ainsi donc, la Constitution proscriit toutes formes de discrimination, mais ne spécifie pas explicitement les motifs protégés. La Constitution est considérée comme ayant un effet direct, c'est-à-dire que ses dispositions sont directement exécutoires pour tous les organes publics, mais elle n'a pas d'effet horizontal. En d'autres termes, si la discrimination est illégale dans le secteur public même en l'absence de lois supplémentaires – celles-ci étant uniquement nécessaires pour prévoir des sanctions et l'application du principe de la non-discrimination – il s'avère essentiel d'adopter des lois spéciales pour proscrire la discrimination dans le secteur privé. Il en va de même des traités internationaux: ceux qui sont juridiquement contraignants pour la Lettonie ne s'appliquent qu'aux organes publics.

Hormis le protocole n° 12 de la Convention européenne des droits de l'homme,<sup>49</sup> qu'elle a signé mais pas encore ratifié, la Lettonie adhère à la plupart des grandes conventions internationales de lutte contre les discriminations, telles que le Pacte international relatif aux droits civils et politiques<sup>50</sup> et son protocole facultatif,<sup>51</sup> le Pacte international relatif aux droits économiques, sociaux et culturels,<sup>52</sup> la Convention internationale sur l'élimination de

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<sup>48</sup> Lettonie, Constitution (*Satversme*), 15 février 1922.

<sup>49</sup> Conseil de l'Europe, *Convention de sauvegarde des droits de l'homme et des libertés fondamentales, telle que modifiée par les protocoles n° 11 et 14*, 4 novembre 1950, STCE n° 005.

<sup>50</sup> Assemblée générale des NU, *Pacte international relatif aux droits civils et politiques*, 16 décembre 1966, Nations unies, Recueil des traités, vol. 999.

<sup>51</sup> Assemblée générale des NU, *Protocole facultatif se rapportant au Pacte international relatif aux droits civils et politiques*, 19 décembre 1966, Nations unies, Recueil des traités, vol. 999.

<sup>52</sup> Assemblée générale des Nations unies, *Pacte international relatif aux droits économiques, sociaux et culturels*, 16 décembre 1966, Nations unies, Recueil des traités, vol. 993.

toutes les formes de discrimination raciale,<sup>53</sup> la Convention-cadre pour la protection des minorités nationales,<sup>54</sup> la Convention relative aux droits de l'enfant,<sup>55</sup> la Convention relative aux droits des personnes handicapées<sup>56</sup> et la Charte sociale européenne révisée.<sup>57</sup> Le gouvernement letton n'a toutefois pas reconnu la compétence du Comité pour l'élimination de la discrimination raciale. Ces instruments ratifiés font partie de l'ordre juridique interne après leur promulgation au Journal officiel et peuvent être appliqués directement par les juridictions nationales sauf si leur application requiert la promulgation d'une loi.

La législation antidiscrimination lettone est fragmentée. Il n'existe pas de loi unique et exhaustive, mais la couverture s'est améliorée suite à l'adoption d'amendements aux lois existantes. Le problème majeur est le fait que la discrimination n'est pas proscrite dans le secteur privé à moins qu'une loi l'interdise explicitement et que, même si elle est proscrite dans le secteur public en vertu de la suprématie de la Constitution, l'absence de loi d'exécution spécifique complique considérablement la mise en application de l'interdiction.

C'est dans la loi sur le travail,<sup>58</sup> adoptée en 2001 et subséquemment modifiée pour combler les lacunes restantes, que l'on trouve l'interdiction de discrimination la plus complète. Cette loi interdit la discrimination dans les relations de travail qu'elle couvre et, depuis novembre 2006, ses dispositions antidiscrimination s'appliquent aux relations dans la fonction publique de l'État.

La loi sur le travail et la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique<sup>59</sup> sont les seules à inclure l'orientation sexuelle en tant que motif interdit de discrimination. La loi sur le travail, la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique, la loi sur la sécurité sociale<sup>60</sup> et la loi sur la protection des droits des consommateurs sont les quatre lois qui font expressément référence au handicap. Les quatre lois mentionnant l'âge en tant que motif interdit de discrimination sont la loi sur le travail, la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique, la loi sur la sécurité sociale et la loi sur les droits des patients.

Plusieurs autres lois contiennent des clauses de non-discrimination avec des listes exhaustives ou ouvertes de motifs de discrimination interdits, mais celles-ci n'incluent jamais tous les motifs visés par les directives. La loi sur l'enseignement contient une liste fermée qui se limite à «la fortune et au statut social, à la race, à l'appartenance ethnique, au sexe, aux convictions religieuses et politiques, à l'état de santé, à la profession et au lieu de résidence». Certaines lois ne contiennent aucune clause antidiscrimination: tel est notamment le cas de la loi sur le logement, bien que les questions relatives au logement tombent sous le coup de la loi modifiée sur la protection des droits des consommateurs.

La loi pénale interdit les crimes de haine/d'incitations à la haine aux motifs du genre, de l'âge, du handicap et d'autres situations, en sus de l'interdiction des crimes à motivation raciale ou religieuse.<sup>61</sup> L'orientation sexuelle n'est pas mentionnée de manière expresse.

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<sup>53</sup> Assemblée générale des NU, *Convention internationale sur l'élimination de toutes les formes de discrimination raciale*, 21 décembre 1965, Nations unies, Recueil des traités, vol. 660.

<sup>54</sup> Conseil de l'Europe, *Convention-cadre pour la protection des minorités nationales*, 1<sup>er</sup> février 1995, STCE n° 157.

<sup>55</sup> Assemblée générale des NU, *Convention relative aux droits de l'enfant*, 20 novembre 1989, Nations unies, Recueil des traités, vol. 1577.

<sup>56</sup> Assemblée générale des NU, *Convention relative aux droits des personnes handicapées: résolution adoptée par l'Assemblée générale*, 24 janvier 2007, A/RES/61/106.

<sup>57</sup> Conseil de l'Europe, *Charte sociale européenne (révisée)*, 3 mai 1996, STCE n° 163.

<sup>58</sup> Lettonie, loi sur le travail (*Darba likums*), 12 juin 2001.

<sup>59</sup> Lettonie, loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique (*Fizisko personu – saimnieciskās darbības veicēju diskriminācijas aizlieguma likums*), 19 décembre 2012.

<sup>60</sup> Lettonie, loi sur la sécurité sociale (*likums 'Par sociālo drošību'*), 7 septembre 1995.

<sup>61</sup> Lettonie, loi pénale (*Krimināllikums*), 17 juin 1998.



La nature fragmentaire de la réglementation est le problème principal de la législation antidiscrimination lettone, et la cause de la plupart des autres problèmes. De manière générale, tous les domaines requis sont couverts mais, à l'intérieur de ceux-ci, tous les motifs requis ne le sont pas.

### 3. Principes généraux et définitions

La loi sur le travail, la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique, la loi sur la sécurité sociale,<sup>62</sup> la loi sur l'aide aux chômeurs et aux demandeurs d'emploi<sup>63</sup> et la loi sur la protection des droits des consommateurs<sup>64</sup> contiennent des définitions de la discrimination directe, de la discrimination indirecte et du harcèlement conformes aux directives; elles interdisent également toute injonction de discriminer. La protection contre les rétorsions existe dans le cadre de la loi sur le travail, de la loi sur la protection des droits des consommateurs, de la loi sur l'aide aux chômeurs et aux demandeurs d'emploi, de la loi sur la sécurité sociale, de la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique et de la loi sur l'enseignement,<sup>65</sup> et en rapport avec les plaintes déposées auprès du Bureau du Médiateur.

La loi est muette sur la question de la discrimination par association ou fondée sur des motifs ou caractéristiques présumés; le libellé des dispositions antidiscrimination contenues dans les lois lettonnes faisant référence à la race, aux convictions religieuses, etc. de la personne (invoquant la disposition) permet sans aucun doute de faire valoir plus aisément une discrimination fondée sur des caractéristiques présumées qu'une discrimination par association. Faute cependant de jurisprudence pertinente, tout ce que l'on peut dire avec certitude, c'est que la loi ne contient pas d'interdiction explicite à l'égard de ces deux formes de discrimination.

Les motifs de discrimination ne sont définis ni dans la loi sur le travail ni ailleurs, et l'on peut craindre que le handicap fasse l'objet d'une interprétation étroite par rapport à la Convention des Nations unies relative aux droits des personnes handicapées en utilisant le terme dans son acception technique, autrement dit en se basant sur une reconnaissance officielle de la capacité de travail réduite de la personne concernée et en excluant le handicap de fait.

La loi sur le travail est la seule à prévoir la justification d'une différence de traitement fondée sur divers motifs en rapport avec l'exigence professionnelle essentielle.

Les dispositions relatives aux exceptions figurant dans d'autres lois («une différence de traitement associée à l'un des motifs sera uniquement admissible lorsque le traitement en question est objectivement justifié par un but légitime et que les moyens d'atteindre ce but sont proportionnés») telles que la loi sur la sécurité sociale, la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique, la loi sur l'aide aux chômeurs et aux demandeurs d'emploi, la loi sur l'enseignement et la loi sur la protection des droits des consommateurs, ne font pas de distinction entre discrimination directe et indirecte, ni entre les motifs visés par les directives et d'autres motifs de traitement différencié. Les amendements apportés aux lois relatives à la discrimination (y compris la discrimination directe) ont été adoptés dans le but de transposer les directives dans l'ordre juridique interne, mais ils manquent de précision dans plusieurs cas distincts et c'est alors aux cours et tribunaux qu'il appartient de consulter le texte des directives. La loi sur le travail prévoit en outre, pour ce qui concerne

<sup>62</sup> L'ancienne définition de la discrimination indirecte restreignant aux situations comparables subsiste dans la loi.

<sup>63</sup> Lettonie, loi sur l'aide aux chômeurs et aux demandeurs d'emploi (*Bezdarbnieku un darba meklētāju atbalsta likums*), 9 mai 2002.

<sup>64</sup> Lettonie, loi sur la protection des droits des consommateurs (*Patērētāju tiesību aizsardzības likums*), 18 mars 1999.

<sup>65</sup> Lettonie, loi sur l'enseignement (*Izglītības likums*), 29 septembre 1998.

l'emploi par des organisations religieuses, une dérogation qui paraît plus large que celle prévue par la directive. La loi sur le travail impose aussi à l'employeur l'obligation d'assurer un aménagement raisonnable pour les personnes handicapées. Il n'existe pas de règles en matière de discrimination multiple.

#### **4. Champ d'application matériel**

La loi sur le travail prévoit une protection contre toutes les formes de discrimination (la discrimination directe, la discrimination indirecte, le harcèlement, l'injonction de discriminer et les rétorsions) dans tous les aspects des relations de travail, tant dans le secteur public que dans le secteur privé, y compris les relations dans la fonction publique (mais à l'exclusion du service militaire) et le travail sous contrat effectué par des indépendants. Cette protection inclut l'établissement des dites relations, en rapport notamment avec le genre, la race, l'âge, le handicap, la religion et l'orientation sexuelle.<sup>66</sup>

L'accès à l'orientation professionnelle et à la formation professionnelle ainsi que les questions d'éducation dans le secteur public comme dans le secteur privé sont couverts par la loi sur le travail qui fait référence à la «formation professionnelle» et par la loi sur l'enseignement,<sup>67</sup> qui s'applique également aux secteurs public et privé. Cette dernière pose néanmoins problème dans la mesure où elle comporte une liste exhaustive de motifs n'incluant ni l'âge, ni le handicap (même si on pourrait faire valoir que celui-ci est couvert par la rubrique «santé»), ni l'orientation sexuelle. L'éducation et la formation pourraient également relever de la loi sur la protection des droits des consommateurs, mais celle-ci limite la liste des motifs interdits au genre, à la race, à l'origine ethnique et au handicap. La loi sur l'aide aux chômeurs et aux demandeurs d'emploi, qui couvre la reconversion professionnelle, interdit la discrimination fondée sur le genre, la race et l'origine ethnique.

Les lois relatives à l'affiliation et à la participation à des organisations de travailleurs ou d'employeurs ou à des organisations professionnelles ne contiennent pas toujours de clauses antidiscrimination; si les dispositions de la loi sur le travail s'appliquent aux deux premiers types d'organisations susmentionnées, les organisations professionnelles continuent pour leur part de poser problème et ne sont pas couvertes. Le domaine de la protection sociale, y compris la sécurité sociale et les soins de santé, est couvert par la loi sur la sécurité sociale qui cite l'âge et le handicap,<sup>68</sup> mais ne fait aucune mention explicite de l'orientation sexuelle. Cette loi définit les services sociaux comme ceux prestés par l'État ou la municipalité, et ne s'applique donc pas au secteur privé.

L'accès aux biens et aux services est couvert par la loi sur la protection des droits des consommateurs, dont la liste des motifs interdits se limite au genre, à la race, à l'origine ethnique et au handicap, ce qui n'est pas en soi incompatible avec les directives.

#### **5. Mise en application de la loi**

Plusieurs voies légales permettent d'adresser un recours en cas de discrimination:

- les juridictions de compétence générale;
- la Cour constitutionnelle: une législation prétendument discriminatoire en rapport avec l'âge a été contestée à deux reprises auprès de cette instance;
- une plainte peut être déposée auprès de l'institution publique ayant elle-même pratiqué une différence de traitement à l'égard de la personne introduisant le recours ou auprès d'une institution de niveau supérieur;

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<sup>66</sup> La liste complète comprend «la race, la couleur de peau, l'âge, le handicap, les convictions religieuses, politiques ou autres, l'origine nationale ou sociale, la fortune ou l'état matrimonial, l'orientation sexuelle ou d'autres situations».

<sup>67</sup> Énumérant comme motifs interdits «la fortune et le statut social, la race, l'appartenance ethnique, le genre, les opinions religieuses ou politiques, l'état de santé, la profession et le lieu de résidence».

<sup>68</sup> La liste des motifs interdits, à l'exception de l'orientation sexuelle, est la même que celle figurant dans la loi sur le travail.

- l'Inspection nationale du travail si la discrimination s'est produite dans le cadre d'une relation de travail. Celle-ci peut infliger une amende;
- le Bureau du Médiateur, qui est habilité à rechercher un règlement à l'amiable; il peut saisir une juridiction administrative lorsqu'il y va de l'intérêt public, ou une juridiction civile s'il s'agit d'un cas de non-respect de l'égalité de traitement.

La voie de recours normale serait une juridiction de compétence générale. Une loi portant sur l'assistance juridique subventionnée par l'État dans les affaires civiles et administratives<sup>69</sup> est en vigueur depuis 2005, mais il faut encore en évaluer le véritable impact. Des ONG peuvent déposer une plainte ou engager une action au nom de personnes physiques victimes de discrimination. Le Bureau du Médiateur peut lui aussi saisir la justice. Les amendements apportés en décembre 2013 à la loi sur les procédures civiles limitent cependant désormais la représentation au niveau de la cassation, y compris dans les affaires de discrimination, aux victimes et aux avocats uniquement, et excluent par conséquent les ONG, le Médiateur et d'autres praticiens du droit.

La disposition relative au renversement de la charge de la preuve est incluse dans la loi sur le travail (emploi), dans la loi sur la protection des droits des consommateurs et dans la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique (ces deux dernières lois couvrant l'accès aux biens et aux services), ainsi que dans la loi sur l'enseignement et dans la loi sur l'aide aux chômeurs et aux demandeurs d'emploi.

La Cour suprême a reproché à plusieurs occasions à des juridictions inférieures de ne pas avoir renversé la charge de la preuve.<sup>70</sup> Dans les affaires relevant de la loi sur les procédures administratives, l'exception d'examen d'office s'applique.

La législation nationale est muette sur la question du recours au test de situation et aux preuves statistiques; on ne trouve nulle trace de leur utilisation et, dès lors, aucune jurisprudence en la matière.

Le montant moyen relativement faible des indemnités allouées dans le cadre d'affaires de discrimination soulève la question de savoir si elles sont effectives, proportionnées et dissuasives. La plupart des arrêts prononcés par les cours et tribunaux ne sont, en outre, pas rendus publics. Les dispositions de la loi pénale prévoyant des peines allant jusqu'à trois ans d'emprisonnement n'ont jamais été appliquées.

La majorité des affaires de discrimination portées en justice concernent le domaine de l'emploi et principalement des motifs liés au genre. Dans les affaires connues de discrimination soumises à la justice entre 2005 et 2017 et dont l'issue a été favorable à la victime (il y en a eu plus d'une douzaine, dont dix portaient sur une discrimination fondée sur le genre, trois sur une discrimination fondée sur le handicap,<sup>71</sup> une sur une discrimination fondée sur l'origine ethnique<sup>72</sup> et une sur une discrimination fondée sur l'âge),<sup>73</sup> les montants attribués se sont situés dans une fourchette allant de 428 à

<sup>69</sup> L'assistance juridique subventionnée par l'État dans les affaires administratives a été interrompue en 2009.

<sup>70</sup> Chambre juridictionnelle civile de la Cour suprême (*Augstākās tiesas Civillietu tiesu palāta*), R. S. c. Nouvelle Église luthérienne évangélique Ste-Gertrude de Riga (*R.S. v. Rīgas Jaunā Svētās Gertrūdes evaņģēliski luteriskā draudze*); Lettonie, Sénat de la Cour suprême (*Latvijas Republikas Augstākās tiesa*), affaire n° SKC-684/2012 (E.L. c. State Joint Stock Company International Airport Riga (*E.L. v Valsts akciju sabiedrība „Starptautiskā lidosta Rīga*)).

<sup>71</sup> Chambre juridictionnelle civile de la Cour suprême (*Augstākās tiesas Civillietu tiesu palāta*), R. S. c. Nouvelle Église évangélique luthérienne Ste-Gertrude de Riga (*R.S. v. Rīgas Jaunā Svētās Gertrūdes evaņģēliski luteriskā draudze*), 11 avril 2007; Lettonie, tribunal régional du Kurzeme (*Kurzemes apgabaltiesas Civillietu tiesas kolēģija*), affaire n° C40066110 (V.Trusēvičs c. SIA Bio-Venta [Bio-Venta Ltd]), 21 septembre 2011.

<sup>72</sup> Tribunal de Jelgava (*Jelgavas tiesa*), S.Kozlovskā c. SIA Palso, affaire n° C15066406, 25 mai 2006.

<sup>73</sup> Sénat de la Cour suprême (*Augstākās tiesas Senāts*), affaire n° C32276312 (SKC-1702/2013), 29 novembre 2013.

7 142 euros.<sup>74</sup> Le montant le plus élevé a été accordé dans une affaire de conciliation, et l'indemnité moyenne pour préjudice moral s'établit à 1 500 euros.

Depuis la ratification de la Convention des Nations unies relative aux droits des personnes handicapées, plusieurs procédures ont été engagées en justice en rapport avec l'aménagement raisonnable à l'intention de ces personnes pour ce qui concerne la protection sociale<sup>75</sup> et l'accès aux bâtiments publics où sont dispensés des soins de santé.<sup>76</sup>

La loi sur les procédures administratives prévoit une indemnisation pour perte financière ou préjudice personnel, y compris le préjudice moral, causé(e) à un particulier par un acte administratif ou par l'action concrète d'une institution. Le code des infractions administratives prévoit une amende de 140 à 715 euros en cas de non-respect de l'interdiction de discrimination. L'Inspection nationale du travail a surtout imposé des sanctions dans des cas d'offres d'emploi entachées de discrimination fondée sur le genre, l'âge ou l'origine ethnique. Les sanctions en question sont allées d'avertissements à des amendes de 70 à 535 euros – soit des montants trop faibles pour être considérés comme dissuasifs. La Cour suprême a précisé, dans le droit fil de la jurisprudence de la Cour de justice de l'Union européenne, qu'il n'y a pas lieu de démontrer spécifiquement l'existence d'un préjudice moral en cas de discrimination, ce préjudice étant présumé du fait même de l'établissement d'une discrimination dans les relations de travail.<sup>77</sup>

## 6. Organismes de promotion de l'égalité de traitement

Depuis mars 2007, les tâches incombant à l'organisme spécialisé sont exécutées par le Bureau du Médiateur, lequel a pour mission de promouvoir le respect des droits de l'homme et notamment la promotion de l'égalité de traitement – sans énumération des motifs de discrimination et, par conséquent, les englobant tous. Il est chargé d'enquêter sur toute plainte individuelle liée à la violation des droits de l'homme, d'entreprendre des enquêtes de sa propre initiative, d'analyser le respect des droits de l'homme et de publier des études et des rapports. Le Bureau est habilité à examiner les plaintes individuelles, à se procurer les informations nécessaires et à s'efforcer de parvenir à un règlement à l'amiable. S'il échoue, le Bureau peut faire connaître aux parties son avis et ses propositions sous la forme de recommandations; il peut également présenter ses suggestions et recommandations à l'institution compétente. Il ne peut cependant ni faire appliquer ses recommandations ni infliger d'amendes. Il a le droit de porter une affaire devant la Cour constitutionnelle lettone si la législation n'est pas conforme à une norme juridique supérieure. De même, il peut saisir une juridiction administrative si la démarche est d'intérêt public, ou une juridiction civile si une violation de l'égalité de traitement est en cause. Il apporte également ses conseils juridiques aux victimes et peut les aider à préparer leur dossier. Le Médiateur n'a jamais représenté un client en justice dans une affaire de discrimination, mais il a facilité la conclusion de deux accords de conciliation.

Les restrictions budgétaires imposées par la crise économique ont inmanquablement affecté le fonctionnement du Bureau du Médiateur, dont le budget était réduit de 57 % en 2010 par rapport à celui de 2008. Elles ont entraîné des réductions de personnel avec pour conséquence qu'à différents moments, le Bureau n'a compté qu'un à trois membres spécialisés dans les questions de discrimination. En 2014, le département juridique en

<sup>74</sup> La Lettonie a adopté le 1<sup>er</sup> janvier 2014 l'euro comme sa monnaie nationale en remplacement du *lats*.

<sup>75</sup> Tribunal administratif régional (*Administratīvā apgabaltiesa*), affaire n° A420528911, B. c. Agence nationale d'assurances sociales (*B. v. pret Valsts Sociālās apdrošināšanas aģentūru*), 27 septembre 2013.

<sup>76</sup> Tribunal administratif de district (*Administratīvā rajona tiesa*), affaire n° A420571712, 2 décembre 2013. Lettonie, chambre juridictionnelle civile de la Cour suprême (*Augstākās tiesas Civillietu tiesu palāta*), R. S. c. Nouvelle Église évangélique luthérienne Ste-Gertrude de Riga (*R.S. v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze*).

<sup>77</sup> Sénat de la Cour suprême (*Augstākās tiesas Senāts*), affaire n° C32276312 (SKC – 1702/2013), 29 novembre 2013, sur <http://www.l2d.lv/v.php?i=82540>.

charge de l'égalité comprenait trois personnes.<sup>78</sup> Il a été fermé début 2015 et son personnel a été affecté à d'autres départements,<sup>79</sup> ce qui suscite certaines préoccupations quant à savoir si le Bureau répond dans la pratique aux exigences minimales de la directive relative à l'égalité raciale. Le budget du Bureau s'établissait à 1 374 956<sup>80</sup> en 2017. Aucune ligne budgétaire n'est prévue pour la fonction en matière d'égalité et de diversité. Les données relatives aux plaintes pour discrimination et à leur aboutissement ne sont pas accessibles au public mais peuvent être obtenues sur demande.

## **7. Points essentiels**

Les différences de traitement ne sont pas interdites de manière adéquate en ce qui concerne la formation professionnelle en dehors des relations d'emploi.

Il n'y a toujours pas de coordination nationale sur les questions relevant de la lutte contre la discrimination. La jurisprudence reste limitée depuis 2004 pour ce qui concerne la discrimination fondée sur la race/l'origine ethnique (1 cas), le handicap (3 cas), l'âge (2 cas), la religion (aucun cas) et l'orientation sexuelle (aucun cas).

Les amendements à la loi sur les procédures civiles qui excluent les ONG de la représentation de victimes de discrimination au niveau de la cassation enfreignent les clauses de non-régression des directives relatives à l'égalité.

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<sup>78</sup> Ceci étant dit, le Bureau ne comprend plus ce département depuis début 2015. Voir le site en anglais du Médiateur (*LR Tiesībsargs*), rubrique «Personnel» sous «About Us» (<http://www.tiesibsargs.lv/en/about-us/darbinieki>).

<sup>79</sup> Voir le site en anglais du Médiateur (*LR Tiesībsargs*) (2015), rubrique «Personnel» sous «About Us» (<http://www.tiesibsargs.lv/en/about-us/darbinieki>).

<sup>80</sup> Ministère des finances (2017), «Budget du Bureau du Médiateur: Protection des droits fondamentaux des personnes privées», disponible (en letton) sur: [http://fm.gov.lv/lv/sadalas/valsts\\_budzets/valsts\\_budzeta\\_vizualizacija/\\_budzets2017/tiesibsarga\\_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/](http://fm.gov.lv/lv/sadalas/valsts_budzets/valsts_budzeta_vizualizacija/_budzets2017/tiesibsarga_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/).

## ZUSAMMENFASSUNG

### 1. Einleitung

Lettland ist ein multiethnisches Land, wobei die Anteile der unterschiedlichen ethnischen Gruppen im Wandel begriffen sind. Die ethnische Herkunft wird im Melderegister verzeichnet. Sie beruht auf der ethnischen Zugehörigkeit der beiden Elternteile und kann bei Erreichen der Volljährigkeit durch die ethnische Zugehörigkeit eines Großelternteils ersetzt werden. Der Eintrag der ethnischen Zugehörigkeit im Pass ist freigestellt. Im Jahr 2011 setzte sich die insgesamt 2 067 887 Einwohner zählende Bevölkerung Lettlands wie folgt zusammen: 62,1 % Letten, 26,9 % Russen, 3,3 % Weißrussen, 2,2 % Ukrainer, 2,2 % Polen, 1,2 % Litauer, 0,3 % Juden, 0,1 % Esten, 0,3 % Roma, 0,1 % Deutsche und 1,3 % sonstige ethnische Gruppen.<sup>81</sup>

1 784 285 Personen bzw. 84,55 % der Bevölkerung sind lettische Staatsbürger; davon sind 71,08 % ethnische Letten, der Rest gehört unterschiedlichen Minderheiten an. 233 393 Personen bzw. 11,06 % sind sogenannte „Nichtbürger“.<sup>82</sup> Die größte Gruppe unter den Nichtbürgern sind ethnische Russen. Fragen im Zusammenhang mit Nichtbürgern werden daher meist behandelt, als würden sie ausschließlich die russische bzw. russischsprachige Bevölkerung betreffen, und die Rechte von Bürgern und Nichtbürgern, wie auch sprachliche Aspekte, sind noch immer heikle Themen. Es gibt mehr als 73 000 Drittstaatsangehörige; die größte Gruppe stellen russische Staatsbürger (54 684), gefolgt von Ukrainern (7045) und Weißrussen (3194).<sup>83</sup>

Die Roma-Bevölkerung in Lettland ist relativ klein und beläuft sich auf 7193 Menschen (2017);<sup>84</sup> Daten von Roma-Verbänden zufolge ist die Zahl jedoch höher.<sup>85</sup> In einer Befragung von 2015 gaben 82,3 % der Roma an, dass man ihnen selbst oder ihren Familienangehörigen aufgrund ihrer ethnischen Herkunft eine Arbeit verweigert hatte.<sup>86</sup> 2016 gab es in Lettland keine separaten Roma-Klassen mehr. Der Anteil der Roma-Kinder, die Sonderschulen besuchen – 34 % im Zeitraum 2016/2017 –, ist jedoch unverhältnismäßig hoch und im Vergleich zu 2013/2014 um 7 % gestiegen.<sup>87</sup>

Nach der Studie „Einstellung gegenüber älteren Menschen und ihre Diskriminierung auf dem lettischen Arbeitsmarkt“ werden Menschen über 40-45 Jahren auf dem lettischen Arbeitsmarkt wegen ihres Alters diskriminiert. Es ist auch allgemein bekannt, dass Menschen mit Behinderungen nur schwer eine Arbeit finden, obwohl sich diese Annahme nicht durch ausreichend repräsentative Untersuchungen belegen lässt.

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<sup>81</sup> Volkszählung von 2011.

<sup>82</sup> „Nichtbürger“ ist eine spezielle Personenkategorie und bezeichnet ehemalige Bürger der UdSSR, die am 1. Juli 1991 in Lettland ansässig waren und nie die Staatsbürgerschaft irgendeines anderen Landes erhalten haben. Ausländische Staatsbürger und Staatenlose fallen daher nicht unter diesen Begriff. Die Daten zur Staatsangehörigkeit sind auf dem Stand vom 01.01.2015.

<sup>83</sup> Zahlen zur Staatsangehörigkeit per 01.01.2015.

<sup>84</sup> Amt für Staatsbürgerschaft und Migrationsangelegenheiten, Statistik der Bevölkerungsregister (01.01.2018), Aufschlüsselung der lettischen Bevölkerung nach Nationalität und ethnischer Zugehörigkeit, abrufbar unter: [http://www.pmlp.gov.lv/lv/assets/documents/1aaaa/ISVN\\_Latvija\\_pec\\_TTB\\_VPD.pdf](http://www.pmlp.gov.lv/lv/assets/documents/1aaaa/ISVN_Latvija_pec_TTB_VPD.pdf).

<sup>85</sup> Latvijas Fakti, Zentrum für Markt- und Sozialstudien (2015), *Romi Latvijā* (Roma in Lettland), S. 44. Die Studie war Teil des Projekts „Different people, various experiences, one Latvia II“, Nr. JUST/2013/PROG/AG/4978/AD, S. 5; abrufbar unter: [http://ec.europa.eu/justice/newsroom/files/summaries\\_selected\\_2013\\_ag\\_prog\\_ad\\_en.pdf](http://ec.europa.eu/justice/newsroom/files/summaries_selected_2013_ag_prog_ad_en.pdf).

<sup>86</sup> *Tirgus un sociālo pētījumu centrs „Latvijas Fakti“* (2015). *Romi Latvijā. Pētījuma ziņojums* 2015, S. 61; abrufbar (in lettischer Sprache) unter: [https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas\\_integracija/Romi/Papildu/romi\\_latvija\\_petijums\\_LV.pdf](https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas_integracija/Romi/Papildu/romi_latvija_petijums_LV.pdf).

<sup>87</sup> Kultusministerium (2014), Informationsbericht über die Umsetzung politischer Maßnahmen zur Eingliederung der Roma (*Informatīvais ziņojums par romu integrācijas politikas pasākumu īstenošanu Latvijā*), 12. lpp, abrufbar unter [https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas\\_integracija/Romi/Dokumenti/Info-zinojumi2014\\_230315.pdf](https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas_integracija/Romi/Dokumenti/Info-zinojumi2014_230315.pdf).

In jüngerer Zeit wurden keine relevanten Studien oder Berichte über ethnische Minderheiten oder Diskriminierung aufgrund der „Rasse“ oder der ethnischen Herkunft veröffentlicht. Die aktuellste Studie stammt aus dem Jahr 2010 und trägt den Titel: *„Ethnic Minorities in the Latvian Labour Market, 1997–2009: Outcomes, Integration Drivers and Barriers“*.

Es gibt wenig dokumentierte Nachweise über die Schwierigkeiten, mit denen Angehörige sexueller Minderheiten konfrontiert sind. Grund dafür ist wahrscheinlich, dass viele von ihnen gezwungen sind, ihre sexuelle Orientierung zu verbergen, weil entsprechende negative Haltungen in der lettischen Gesellschaft weit verbreitet sind.

Regelmäßige Konsultationen finden nur mit NROs statt, die sich für die Rechte von Behinderten und für Geschlechtergleichstellung einsetzen. Es gibt zwar einen Rahmen für den Dialog mit den Sozialpartnern, das Thema Diskriminierung wird jedoch nur selten behandelt und wenn, dann meist in Bezug auf die Gleichstellung von Frauen und Männern. Es gibt kaum eine öffentliche Debatte zum Thema, höchstens zur Stellung der russischsprachigen Minderheit oder, im Zusammenhang mit Schwulen- und Lesbian-Veranstaltungen, zu Fragen der sexuellen Orientierung.

Seit der Umsetzung der Gleichbehandlungsrichtlinien und der Schließung des Sekretariats des Sonderministers für Integration gibt es keine nationale Stelle, die den Kampf gegen Diskriminierung koordiniert.

Die einzige Gruppe, die in gewissem Umfang durch Fördermaßnahmen unterstützt wird, sind Menschen mit Behinderungen. Es gibt gesetzlich geregelte finanzielle Anreize, mit denen Arbeitgeber bei der Beschäftigung behinderter Menschen unterstützt werden. Nirgendwo im lettischen Recht sind positive Maßnahmen vorgesehen.

## **2. Wichtigste Rechtsvorschriften**

Den Eckpfeiler des Diskriminierungsverbots in Lettland bildet Artikel 91 der lettischen Verfassung,<sup>88</sup> wonach unter anderem die Menschenrechte ohne jede Diskriminierung geschützt werden müssen. Das heißt, die Verfassung verbietet Diskriminierung, zählt jedoch nicht ausdrücklich die geschützten Diskriminierungsgründe auf. Die Verfassung ist direkt anwendbar und damit für alle öffentlichen Stellen verbindlich, sie hat jedoch keine horizontale Wirkung. Damit ist Diskriminierung zwar im öffentlichen Sektor auch ohne weitere gesetzliche Bestimmungen verboten, die daher nur benötigt werden, um Sanktionen und Rechtsmittel zur Durchsetzung des Gleichbehandlungsgrundsatzes zu regulieren. Im privaten Sektor ist die Einführung spezieller Gesetze, die Diskriminierung verbieten, jedoch unerlässlich. Das gleiche gilt für internationale Abkommen: Sie sind in Lettland nur für öffentliche Stellen verbindlich.

Neben dem 12. Protokoll der Europäischen Menschenrechtskonvention,<sup>89</sup> das Lettland unterzeichnet, aber noch nicht ratifiziert hat, ist das Land den meisten wichtigen internationalen Übereinkommen zur Bekämpfung von Diskriminierung beigetreten, z. B. dem Internationalen Pakt über bürgerliche und politische Rechte,<sup>90</sup> dem Fakultativprotokoll zu diesem Pakt,<sup>91</sup> dem Pakt über wirtschaftliche, soziale und kulturelle Rechte,<sup>92</sup> dem

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<sup>88</sup> Lettland, Verfassung (*Satversme*), 15.02.1922.

<sup>89</sup> Europarat, *Konvention zum Schutz der Menschenrechte und Grundfreiheiten*, geändert durch die Protokolle Nr. 11 und 14, 04.11.1950, ETS 5.

<sup>90</sup> UN-Vollversammlung, *Internationaler Pakt über bürgerliche und politische Rechte*, 16.12.1966, Vertragssammlung der Vereinten Nationen, Band 999.

<sup>91</sup> UN-Vollversammlung, *Fakultativprotokoll zum Internationalen Pakt über bürgerliche und politische Rechte*, 19.12.1966, Vertragssammlung der Vereinten Nationen, Band 999.

<sup>92</sup> UN-Vollversammlung, *Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte*, 16.12.1966, Vertragssammlung der Vereinten Nationen, Band 993.

Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung,<sup>93</sup> dem Rahmenübereinkommen zum Schutz nationaler Minderheiten,<sup>94</sup> dem Übereinkommen über die Rechte des Kindes,<sup>95</sup> dem UN-Übereinkommen über die Rechte von Menschen mit Behinderungen<sup>96</sup> und der revidierten Europäischen Sozialcharta.<sup>97</sup> Allerdings erkennt die lettische Regierung die Zuständigkeit des UN-Ausschusses für die Beseitigung der Rassendiskriminierung nicht an. Die ratifizierten Übereinkommen wurden im *Lettischen Amtsblatt* bekannt gemacht, sie bilden damit einen Teil der nationalen Rechtsordnung und können von lettischen Gerichten direkt angewandt werden, sofern ihre Anwendung nicht die Verabschiedung eines Gesetzes voraussetzt.

Das lettische Antidiskriminierungsrecht ist fragmentiert, d. h. es gibt kein einheitliches, umfassendes Antidiskriminierungsgesetz. Durch die Überarbeitung geltender Gesetze konnte der Geltungsbereich jedoch ausgeweitet werden. Die Vorrangstellung der Verfassung verbietet Diskriminierung im öffentlichen Sektor, nicht jedoch im privaten Sektor, wo ein solches Verbot durch Einzelgesetze eingeführt werden muss. Deshalb kompliziert das Fehlen eines allgemeinen Antidiskriminierungsgesetzes die Durchsetzung des Gleichbehandlungsgebots.

Das weitreichendste Verbot findet sich im 2001 verabschiedeten Arbeitsgesetz,<sup>98</sup> das seitdem noch überarbeitet wurde, um bestehende Gesetzeslücken zu schließen. Das Gesetz verbietet Diskriminierung in allen Beschäftigungsverhältnissen, die unter das Gesetz fallen, und seit November 2006 wird dieses Diskriminierungsverbot auch auf Beschäftigungsverhältnisse der öffentlichen Hand angewandt.

Das Arbeitsgesetz und das Gesetz über das Verbot der Diskriminierung von natürlichen Personen – Wirtschaftsakteuren<sup>99</sup> sind die einzigen Gesetze, die sexuelle Orientierung als verbotenen Diskriminierungsgrund beinhalten. Das Arbeitsgesetz, das Gesetz über das Verbot der Diskriminierung von natürlichen Personen – Wirtschaftsakteuren, das Gesetz über soziale Sicherheit<sup>100</sup> und das Gesetz zum Schutz der Verbraucherrechte sind die vier Gesetze, in denen Behinderung ausdrücklich erwähnt wird. Die vier Gesetze, die Alter als verbotenen Diskriminierungsgrund enthalten, sind das Arbeitsgesetz, das Gesetz über das Verbot der Diskriminierung von natürlichen Personen – Wirtschaftsakteuren, das Gesetz über soziale Sicherheit und das Gesetz über Patientenrechte.

Einige andere Gesetze beinhalten Diskriminierungsverbote mit abgeschlossenen oder offenen Listen verbotener Diskriminierungsgründe, die jedoch nie alle Gründe umfassen, die unter die Richtlinien fallen. Das Bildungsgesetz enthält eine abgeschlossene Aufzählung, in der „Vermögen und sozialer Status, „Rasse“, ethnische Zugehörigkeit, Geschlecht, religiöse oder politische Überzeugung, Gesundheitszustand, Beruf und Wohnort“ aufgeführt sind. Manche Gesetze enthalten überhaupt kein Diskriminierungsverbot, zum Beispiel das Gesetz über Wohnraum, wobei dieser Bereich teilweise im reformierten Verbraucherschutzgesetz geregelt ist.

Das Strafgesetzbuch verbietet Hassverbrechen bzw. Anstiftung zum Hass aufgrund des Geschlechts, des Alters, einer Behinderung oder anderer Merkmale sowie rassistisch oder religiös motivierte Verbrechen.<sup>101</sup> Sexuelle Orientierung wird nicht ausdrücklich erwähnt.

<sup>93</sup> UN-Vollversammlung, *Internationales Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung*, 21.12.1965, Vertragssammlung der Vereinten Nationen, Band 660.

<sup>94</sup> Europarat, *Rahmenübereinkommen zum Schutz nationaler Minderheiten*, 01.02.1995, ETS 157.

<sup>95</sup> UN-Vollversammlung, *Übereinkommen über die Rechte des Kindes*, 20. November 1989, Vertragssammlung der Vereinten Nationen, Band 1577.

<sup>96</sup> UN-Vollversammlung, *Übereinkommen über die Rechte von Menschen mit Behinderungen: Resolution der Generalversammlung*, 24.01.2007, A/RES/61/106.

<sup>97</sup> Europarat, *Europäische Sozialcharta (revidiert)*, 03.05.1996, ETS 163.

<sup>98</sup> Lettland, *Arbeitsgesetz (Darba likums)*, 12.06.2001.

<sup>99</sup> Lettland, *Gesetz über das Verbot der Diskriminierung von natürlichen Personen – Wirtschaftsakteuren (Fizisko personu – saimnieciskās darbības veicēju diskriminācijas aizlieguma likums)*, 19.12.2012.

<sup>100</sup> Lettland, *Gesetz über soziale Sicherheit (likums „Par sociālo drošību“)*, 07.09.1995.

<sup>101</sup> Lettland, *Strafgesetzbuch (Krimināllikums)*, 17.06.1998.



Größtes Problem des lettischen Antidiskriminierungsrechts ist seine lückenhafte Struktur, aus der sich die meisten anderen Probleme ergeben. Prinzipiell sind alle vorgegebenen Bereiche abgedeckt, jedoch sind nicht in allen Bereichen alle geforderten Diskriminierungsgründe geschützt.

### 3. Wichtigste Grundsätze und Begriffe

Das Arbeitsgesetz, das Gesetz über das Verbot der Diskriminierung von natürlichen Personen – Wirtschaftsakteuren, das Gesetz über soziale Sicherheit,<sup>102</sup> das Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden<sup>103</sup> und das Verbraucherschutzgesetz<sup>104</sup> enthalten Definitionen von unmittelbarer und mittelbarer Diskriminierung und Belästigung, die den Richtlinien entsprechen; sie verbieten auch die Anweisung zur Diskriminierung. Schutz vor Viktimisierung bieten das Arbeitsgesetz, das Verbraucherschutzgesetz, das Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden, das Gesetz über soziale Sicherheit, das Gesetz über das Verbot der Diskriminierung von natürlichen Personen – Wirtschaftsakteuren und das Bildungsgesetz;<sup>105</sup> Schutz vor Viktimisierung besteht auch im Zusammenhang mit Beschwerden bei der Ombudsstelle.

Es gibt keine Bestimmungen über Diskriminierung aufgrund von Assoziierung oder von mutmaßlichen Gründen oder Eigenschaften; der Wortlaut des Diskriminierungsverbots in lettischen Gesetzen bezieht sich auf „Rasse“, religiöse Überzeugung usw. von Personen (d. h. der Personen, die sich auf das Verbot berufen), wodurch Diskriminierung aufgrund mutmaßlicher Eigenschaften wesentlich einfacher zu verfolgen ist als Diskriminierung aufgrund von Assoziierung. Da aber noch kein Fallrecht zu diesen Fragen vorliegt, lässt sich bisher nur mit Sicherheit sagen, dass diese Diskriminierungsformen im lettischen Recht nicht ausdrücklich verboten sind.

Die Diskriminierungsgründe werden weder im Arbeitsrecht noch anderswo definiert. Es steht zu befürchten, dass der Begriff „Behinderung“ enger gefasst ist als im Übereinkommen über die Rechte von Menschen mit Behinderungen der Vereinten Nationen und auf eine technische Definition reduziert wird, bei der nur eine formal bestätigte Minderung der Erwerbsfähigkeit anerkannt wird und nicht eine tatsächliche Behinderung.

Das Arbeitsgesetz ist das einzige Gesetz, das Ungleichbehandlung aus bestimmten Gründen wegen wesentlicher beruflicher Anforderungen zulässt.

Die Ausnahmebestimmungen in anderen Gesetzen („eine Ungleichbehandlung in Bezug auf einen der genannten Gründe ist nur zulässig, wenn sie durch einen rechtmäßigen Zweck sachlich gerechtfertigt ist und die gewählten Mittel zur Erreichung dieses Ziels verhältnismäßig sind“) wie dem Gesetz über soziale Sicherheit, dem Gesetz über das Verbot der Diskriminierung von natürlichen Personen – Wirtschaftsakteuren, dem Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden, dem Bildungsgesetz und dem Verbraucherschutzgesetz unterscheiden weder zwischen unmittelbarer und mittelbarer Diskriminierung, noch zwischen Gründen, die unter die Richtlinien fallen, und anderen Gründen für eine Ungleichbehandlung. Die Gesetze, die Diskriminierung (einschließlich von unmittelbarer Diskriminierung) verbieten, wurden im Rahmen der Umsetzung der Richtlinien in nationales Recht überarbeitet, allerdings in vielen Fällen nicht mit ausreichender Präzision. In diesen Fällen müssen die Gerichte sich am Wortlaut der Richtlinien orientieren. Außerdem enthält das Arbeitsgesetz eine Ausnahmebestimmung für religiöse Organisationen, die auf den ersten Blick weiter gefasst ist, als es die Richtlinien

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<sup>102</sup> Die alte Definition von mittelbarer Diskriminierung, die den Schutz auf vergleichbare Situationen einschränkt, ist in dem Gesetz weiterhin enthalten.

<sup>103</sup> Lettland, Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden (*Bezdarbnieku un darba meklētāju atbalsta likums*), 09.05.2002.

<sup>104</sup> Lettland, Verbraucherschutzgesetz (*Patērētāju tiesību aizsardzības likums*), 18.03.1999.

<sup>105</sup> Lettland, Bildungsgesetz (*Izglītības likums*), 29.09.1998.

erlauben. Das Arbeitsgesetz verpflichtet Arbeitgeber, angemessene Vorkehrungen für Menschen mit Behinderungen zu treffen. Es gibt keine Bestimmungen über Mehrfachdiskriminierung.

#### **4. Sachlicher Geltungsbereich**

Das Arbeitsgesetz bietet in allen Aspekten von Beschäftigungsverhältnissen, sowohl im öffentlichen als auch im privaten Sektor, einschließlich des öffentlichen Dienstes (jedoch nicht beim Militärdienst) und bei Auftragsarbeiten, die durch selbständig Erwerbstätige ausgeführt werden, Schutz vor jeder Form der Diskriminierung (unmittelbare und mittelbare Diskriminierung, Belästigung, Anweisung zur Diskriminierung und Viktimisierung). Das Verbot gilt auch für die Einstellung von Arbeitnehmern und bezieht sich unter anderem auf die Gründe Geschlecht, „Rasse“, Alter, Behinderung, Religion und sexuelle Orientierung.<sup>106</sup>

Der Zugang zur Berufsberatung und beruflichen Bildung und Fragen der Bildung im öffentlichen und privaten Sektor sind im Arbeitsgesetz geregelt, das sich auf die „berufliche Bildung“ bezieht, und im Bildungsgesetz,<sup>107</sup> das ebenfalls für den öffentlichen wie auch den privaten Sektor gilt. Allerdings enthält letzteres Gesetz eine abgeschlossene Aufzählung verbotener Diskriminierungsgründe, in der Alter, Behinderung und sexuelle Orientierung nicht enthalten sind (obwohl Behinderung möglicherweise unter den Begriff „Gesundheitszustand“ subsumiert werden kann). Auch das Verbraucherschutzgesetz ist möglicherweise für Fragen der allgemeinen und beruflichen Bildung relevant, dieses verbietet jedoch nur Diskriminierung aufgrund von Geschlecht, „Rasse“, ethnischer Herkunft und Behinderung. Das Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden, das den Bereich der Fortbildung betrifft, verbietet Diskriminierung aufgrund von Geschlecht, „Rasse“ und ethnischer Herkunft.

Die Gesetze über Mitgliedschaft und Mitwirkung in einer Arbeitnehmer- oder Arbeitgeberorganisation bzw. einer Berufsorganisation enthalten nicht in jedem Fall ein Diskriminierungsverbot. Die Bestimmungen des Arbeitsgesetzes gelten zwar für die ersten beiden, Berufsorganisationen bleiben aber ein Problem und sind nicht gesetzlich abgedeckt. Der Bereich Sozialschutz einschließlich der sozialen Sicherheit und der Gesundheitsversorgung ist im Gesetz über soziale Sicherheit geregelt, das Alter und Behinderung aufzählt,<sup>108</sup> sexuelle Orientierung jedoch nicht ausdrücklich erwähnt. Außerdem definiert dieses Gesetz soziale Leistungen als Leistungen des Staates oder der Kommunen, d. h. es gilt nicht für den privaten Sektor.

Der Zugang zu Gütern und Dienstleistungen ist durch das Verbraucherschutzgesetz abgedeckt. Die Liste der verbotenen Gründe ist auf Geschlecht, „Rasse“, ethnische Herkunft und Behinderung beschränkt, was an sich nicht gegen die Richtlinien verstößt.

#### **5. Rechtsdurchsetzung**

Opfer von Diskriminierung haben verschiedene rechtliche Möglichkeiten:

- Klage vor einem ordentlichen Gericht;
- Verfassungsgericht – es wurde bereits zweimal gegen Rechtsvorschriften Beschwerde eingereicht, weil deren Bestimmungen eine mutmaßliche Altersdiskriminierung darstellen,

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<sup>106</sup> Die vollständige Liste beinhaltet „Rasse“, Hautfarbe, Alter, Behinderung, religiöse, politische oder sonstige Überzeugung, nationale oder soziale Herkunft, Vermögens- oder Personenstand, sexuelle Orientierung oder sonstige Umstände“.

<sup>107</sup> Hier werden „Vermögen und sozialer Status, „Rasse“, ethnische Zugehörigkeit, Geschlecht, religiöse oder politische Überzeugungen, Gesundheitszustand, Beruf und Wohnort“ als verbotene Gründe aufgezählt.

<sup>108</sup> Die Liste der verbotenen Diskriminierungsgründe entspricht der des Arbeitsgesetzes mit Ausnahme von sexueller Orientierung.

- Beschwerde bei der öffentlichen Stelle, die gegen den Gleichbehandlungsgrundsatz verstoßen hat, oder bei einer übergeordneten Stelle,
- Staatliche Arbeitsinspektion, wenn die Diskriminierung im Rahmen eines Arbeitsverhältnisses stattgefunden hat, die Inspektion kann Geldbußen verhängen,
- Büro des Ombudsmanns, der eine gütliche Einigung anstreben kann. Der Ombudsmann kann im öffentlichen Interesse Klage vor einem Verwaltungsgericht einreichen oder Fälle vor ein Zivilgericht bringen, wenn in einem Fall der Gleichbehandlungsgrundsatz verletzt wurde.

Der normale Rechtsweg wäre eine Klage vor einem ordentlichen Gericht. Seit 2005 ist ein Gesetz in Kraft, das eine staatlich finanzierte Prozesskostenhilfe in Zivilverfahren regelt,<sup>109</sup> seine Wirksamkeit in der Praxis ist aber noch kaum untersucht. NROs können im Namen natürlicher Personen, die Opfer von Diskriminierung geworden sind, eine Beschwerde einlegen oder klagen. Auch das Büro des Ombudsmanns kann Klagen einreichen. Allerdings ist die Beteiligung an Verfahren vor Berufungsgerichten, auch in Diskriminierungsfällen, seit einer Reform der Zivilprozessordnung im Dezember 2013 auf die Opfer und deren Rechtsanwälte beschränkt, was NROs, den Ombudsmann und andere rechtliche Vertreter ausschließt.

Das Arbeitsgesetz (Beschäftigung), das Verbraucherschutzgesetz und das Gesetz über das Verbot der Diskriminierung von natürlichen Personen – Wirtschaftsakteuren (die beide den Zugang zu Gütern und Dienstleistungen betreffen) sowie das Bildungsgesetz und das Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden sehen eine Verlagerung der Beweislast vor.

In mehreren Fällen hat der Oberste Gerichtshof untergeordnete Gerichte gerügt, weil sie die Beweislast nicht umgekehrt hatten.<sup>110</sup> Für Fälle, die unter die Verwaltungsverfahrensordnung fallen, gilt die Ausnahme für eine Untersuchung von Amts wegen.

Das lettische Recht enthält keine Bestimmungen über Situationstests und die Verwendung statistischer Beweise. Es liegen keine Daten zu deren Verwendung und kein Fallrecht vor.

Die in Diskriminierungsfällen zugesprochenen Schadenersatzbeträge sind im Schnitt relativ niedrig, daher ist es zweifelhaft, ob diese Sanktionen verhältnismäßig, wirksam und abschreckend sind. Zudem ist die Mehrzahl der Gerichtsurteile nicht öffentlich einsehbar. Die im Strafgesetzbuch vorgesehene Höchststrafe von bis zu drei Jahren Haft wurde noch nie verhängt.

Die meisten der vor Gericht verhandelten Diskriminierungsfälle betreffen den Bereich Beschäftigung und beziehen sich überwiegend auf Diskriminierung wegen des Geschlechts. Von 2005 bis einschließlich 2017 lagen die zugesprochenen Beträge in den bekannten Diskriminierungsfällen, in denen die Opfer Recht bekamen (es gab mehr als ein Dutzend; in zehn Fällen ging es um Diskriminierung wegen des Geschlechts, in drei um Behinderung,<sup>111</sup> in einem um ethnische Zugehörigkeit<sup>112</sup> und in einem um Alter),<sup>113</sup>

<sup>109</sup> Die staatliche Prozesskostenhilfe in Verwaltungsverfahren wurde 2009 abgeschafft.

<sup>110</sup> Oberster Gerichtshof, Abteilung für Zivilsachen (*Augstākās tiesas Civillietu tiesu palāta*), *R. S. gegen die neue evangelisch-lutherische Kirche St. Gertrude in Riga* (R.S. v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze); Senat des Obersten Gerichtshofs (*Latvijas Republikas Augstākās tiesa*), Rechtssache SKC-684/2012, *E.L. gegen die Staatliche Aktiengesellschaft „Internationaler Flughafen Riga“* (E.L. v Valsts akciju sabiedrība „Starptautiskā lidosta Rīga“).

<sup>111</sup> Oberster Gerichtshof, Abteilung für Zivilsachen (*Augstākās tiesas Civillietu tiesu palāta*), *R. S. gegen die neue evangelisch-lutherische Kirche St. Gertrude in Riga* (R.S. v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze), 11.04.2007; Bezirksgericht Kurzeme (*Kurzemes apgabaltiesas Civillietu tiesas kolēģija*), Rechtssache C40066110 (*V.Trusēvičs v. SIA Bio-Venta (Bio-Venta Ltd)*), 21.09.2011.

<sup>112</sup> Amtsgericht Jelgava (*Jelgavas tiesa*), *S.Kozlovskā gegen SIA Palso*, Rechtssache C15066406, 25.05.2006.

<sup>113</sup> Senat des Obersten Gerichtshofs (*Augstākās tiesas Senāts*), Rechtssache C32276312 (SKC-1702/2013), 29.11.2013.

zwischen 428 Euro<sup>114</sup> und 7142 Euro. Der höchste Betrag wurde in einem Schlichtungsverfahren zugesprochen, das zugesprochene Schmerzensgeld lag hingegen im Schnitt bei 1500 Euro.

Seit der Ratifizierung der UN-BRK wurden im Bereich Sozialschutz<sup>115</sup> und beim Zugang zu öffentlichen Gebäuden des Gesundheitswesens mehrere Klagen eingereicht, weil keine angemessenen Vorkehrungen für Menschen mit Behinderungen getroffen worden waren.<sup>116</sup>

Nach der Verwaltungsverfahrensordnung kann Personen, denen durch einen Verwaltungsakt oder die Handlungen einer staatlichen Institution finanzielle Verluste und persönliche, auch immaterielle, Schäden entstanden sind, eine Entschädigung zugesprochen werden. Das Gesetzbuch über Ordnungswidrigkeiten sieht für Verstöße gegen das Diskriminierungsverbot Geldbußen zwischen 140 Euro und 715 Euro vor. Die Staatliche Arbeitsinspektion hat bereits entsprechende Sanktionen verhängt, vorwiegend für Diskriminierung in Stellenanzeigen aufgrund von Geschlecht, Alter und ethnischer Zugehörigkeit. Diese Sanktionen reichten von Verwarnungen bis zu Geldbußen in Höhe von 70 bis 535 Euro, wobei diese geringen Beträge wohl kaum abschreckend wirken dürften. Der Oberste Gerichtshof hat, in Übereinstimmung mit dem Europäischen Gerichtshof, verdeutlicht, dass in Diskriminierungsfällen immaterielle Schäden nicht speziell nachgewiesen werden müssen, weil schon das Bestehen einer Diskriminierung im Beschäftigungsverhältnis einen ideellen Schaden glaubhaft macht.<sup>117</sup>

## 6. Gleichbehandlungsstellen

Seit März 2007 übt die Ombudsstelle die Funktion der nationalen Gleichbehandlungsstelle aus. Zu ihren Aufgaben gehört der Schutz der Menschenrechte einschließlich der Förderung des Gleichbehandlungsgrundsatzes, wobei keine speziellen Diskriminierungsgründe genannt werden und somit alle Gründe abgedeckt sind. Zu den Aufgaben der Ombudsstelle gehört es, individuelle Beschwerden wegen Menschenrechtsverletzungen zu untersuchen, gegebenenfalls auf eigene Initiative Untersuchungen einzuleiten, die Menschenrechtslage zu analysieren, Befragungen durchzuführen und Berichte zu erstellen. Sie ist befugt, Klagen von Einzelpersonen zu prüfen, die notwendigen Informationen anzufordern und ein Schlichtungsverfahren durchzuführen. Ist die Schlichtung nicht erfolgreich, kann die Ombudsstelle den Parteien ihre rechtliche Stellungnahme in Form von Empfehlungen mitteilen und Empfehlungen für die zuständige Behörde oder den zuständigen Amtsträger aussprechen; diese Empfehlungen sind jedoch nicht verbindlich und die Ombudsstelle kann auch keine Geldbußen verhängen. Sie ist berechtigt, vor dem Verfassungsgericht zu klagen, wenn eine Rechtsvorschrift gegen eine höherrangige Rechtsnorm verstößt. Entsprechend kann sie bei einem Verwaltungsgericht Klage einreichen, wenn sie dabei öffentliche Interessen verfolgt, oder bei einem Zivilgericht, wenn sie einen Verstoß gegen das Diskriminierungsverbot festgestellt hat. Außerdem bietet die Ombudsstelle eine Rechtsberatung für Diskriminierungsopfer an und unterstützt diese bei der Vorbereitung ihrer Klage. Der Ombudsmann hat noch nie ein Diskriminierungsopfer vor Gericht vertreten, hat aber zwei Schlichtungsverfahren erfolgreich durchgeführt.

Die Mittelkürzungen infolge der Wirtschaftskrise haben die Funktion der Gleichbehandlungsstelle natürlich beeinträchtigt. 2010 wurde der Etat der Einrichtung im Vergleich zu 2008 um 57 % gekürzt. Dies führte zu personellen Einschnitten. Zeitweise verfügte die Einrichtung über ein bis drei Mitarbeiter, die auf Diskriminierungsfragen

<sup>114</sup> Lettland hat zum 01.01.2014 die frühere Landeswährung, den *Lats*, durch den Euro ersetzt.

<sup>115</sup> Regionales Verwaltungsgericht (*Administratīvā apgabaltiesa*), Rechtssache A420528911, *B. gegen die staatliche Sozialversicherungsagentur* (B.V. pret Valsts Sociālās apdrošināšanas aģentūru), 27.09.2013.

<sup>116</sup> Bezirksverwaltungsgericht (*Administratīvā rajona tiesa*), Rechtssache A420571712, 02.12.2013; Oberster Gerichtshof, Abteilung für Zivilsachen (*Augstākās tiesas Civillietu tiesu palāta*), *R. S. gegen die neue evangelisch-lutherische Kirche St. Gertrude in Riga* (R.S. v. Rīgas Jaunā Svētās Gertrūdes evaņģēliski luteriskā draudze).

<sup>117</sup> Senat des Obersten Gerichtshofs (*Augstākās tiesas Senāts*), Rechtssache C32276312 (SKC – 1702/2013), 29.11.2013.

spezialisiert waren. 2014 bestand die Abteilung „Rechtliche Gleichstellung“ aus drei Mitarbeitern.<sup>118</sup> Anfang 2015 wurde die Abteilung geschlossen und das Personal anderen Abteilungen zugewiesen,<sup>119</sup> was die Frage aufwirft, ob die Einrichtung in der Praxis den Mindestanforderungen der Antirassismusrichtlinie entspricht. 2017 verfügte die Gleichbehandlungsstelle über einen Etat von 1 374 956 Euro.<sup>120</sup> Es gibt keinen gesonderten Etatposten für den Bereich Gleichstellung und Vielfalt. Informationen über Beschwerden wegen Diskriminierung und deren Ausgang sind öffentlich nicht zugänglich, auf Anfrage jedoch erhältlich.

## 7. Zentrale Punkte

Unterschiede in der Behandlung sind in der beruflichen Bildung außerhalb von Beschäftigungsverhältnissen nicht ausreichend verboten.

Es gibt weiterhin keine nationale Koordination von Antidiskriminierungsmaßnahmen. Seit 2004 gibt es nur ein äußerst begrenztes Fallrecht in Bezug auf die Diskriminierungsgründe „Rasse“ und ethnische Herkunft (1), Behinderung (3), Alter (2), Religion (0) und sexuelle Orientierung (0).

Die überarbeitete Zivilprozessordnung macht es NROs unmöglich, Opfer von Diskriminierung in höheren Instanzen zu vertreten und fällt damit hinter das von den Gleichbehandlungsrichtlinien geforderte Schutzniveau zurück.

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<sup>118</sup> Seit Anfang 2015 besteht diese Abteilung jedoch nicht mehr. Vgl.: Ombudsmann (LR Tiesībsargs), „Personnel“ (unter „About us“), abrufbar (auf Englisch) unter <http://www.tiesibsargs.lv/par-mums/darbinieki>.

<sup>119</sup> LR Tiesībsargs (2015), „Personnel“, abrufbar unter <http://www.tiesibsargs.lv/en/about-us/darbinieki>.

<sup>120</sup> Finanzministerium (2017), „Etat der Ombudsstelle: Schutz der Menschenrechte von Privatpersonen“, abrufbar (auf Lettisch) unter [http://fm.gov.lv/lv/sadalas/valsts\\_budzets/valsts\\_budzeta\\_vizualizacija/\\_budzets2017/tiesibsarga\\_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/](http://fm.gov.lv/lv/sadalas/valsts_budzets/valsts_budzeta_vizualizacija/_budzets2017/tiesibsarga_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/).

## INTRODUCTION

### The national legal system

Latvia's legal system belongs to the continental (Romano-Germanic) law system. Latvia's law was significantly influenced by German (and subsequently, Roman) law, especially in areas of civil, administrative and constitutional law. The Constitution (*Satversme*), adopted in 1922, was drafted using the Weimar Constitution, the constitutions of German states, and the Constitution of France as primary models. The most important source of law in Latvia is legal acts, which can be divided into two categories: external and internal. External legal acts are universally binding. The main types of external legal acts are laws, regulations of the Cabinet of Ministers, and binding regulations of local municipalities. Internal legal acts bind only the issuing state institution. Examples of internal legal acts are statutes, instructions and recommendations.

The hierarchical system of legal acts in Latvia is the following: 1) the Constitution; 2) laws, 3) regulations of the Cabinet of Ministers; 4) binding regulations of local authorities. International and EU legal norms are applied in accordance with their ranking in the hierarchy of external regulatory enactments. In cases of conflicts between Latvian and international/EU statute of the same legal force, the international/EU law or provision must be applied.<sup>121</sup>

Latvia is a multi-ethnic country, although the proportion of the different ethnic groups among its population has varied. In 2011, of a population of 2 067 887, 62.1 % were Latvians, 26.9 % Russians, 3.3 % Belarusians, 2.2 % Ukrainians, 2.2 % Poles; 1.2 % Lithuanians, 0.3 % Jewish, 0.1 % Estonians, 0.3 % Roma, 0.1 % Germans, and 1.3 % others.<sup>122</sup> Latvian citizens number 1 784 285 or 84.55 % of the population; of these, ethnic Latvians constitute 71.08 %. In addition, 11.06 % or 233 393 inhabitants are non-citizens,<sup>123</sup> of which ethnic Russians are the largest group. Therefore, issues relating to non-citizens are often treated as mainly concerning Russians or Russian-speakers, and the rights of citizens and non-citizens, as well as linguistic issues, remain sensitive. There are more than 73 000 third country nationals; the largest group are citizens of Russia (54 684), many of whom are long term residents in Latvia, followed by citizens of Ukraine (7 045) and citizens of Belarus (3 194). There are also 178 stateless persons living in Latvia.<sup>124</sup>

List of main legislation transposing and implementing the directives

Latvian anti-discrimination law remains scattered across many pieces of legislation. However, the main problem is that while most fields covered by the directives are covered in Latvia, the law often does not apply to all grounds – which results in incomplete protection. The older laws containing an equality clause never include all of the grounds required by the directives and not all of them leave the list of grounds open. Furthermore, the laws that are supposed to implement the directives leave some grounds uncovered.

The main anti-discrimination laws transposing the directives are:

- Labour Law<sup>125</sup> – adopted 20.06.2001, in force 01.06.2002, latest amendments 27.07.2017, grounds: race, skin colour, age, disability, religious, political or other

<sup>121</sup> Update: Guide to Latvian Legal System and Legal Research (2012), available at: <http://www.nyulawglobal.org/globalex/Latvia1.html>.

<sup>122</sup> 2011 Population Census.

<sup>123</sup> Non-citizens are a special category of people - former USSR citizens who were resident in Latvia on 01.07.1991 and have not obtained citizenship of any other country, thus this term does not encompass foreign citizens and stateless persons. Office of Citizenship and Migration Affairs, Statistics of the Population Register (01.01.2018) Latvian population breakdown by nationality, available at: [http://www.pmlp.gov.lv/lv/assets/documents/1aaaa/ISVP\\_Latvija\\_pec\\_VPD.pdf](http://www.pmlp.gov.lv/lv/assets/documents/1aaaa/ISVP_Latvija_pec_VPD.pdf).

<sup>124</sup> Office of Citizenship and Migration Affairs, Statistics of the Population Register.

<sup>125</sup> Latvia, Labour Law (*Darba likums*), 20.06.2001, <http://likumi.lv/doc.php?id=26019>.

- conviction, national and social origin, property and marital status, sexual orientation or other circumstances; covers employment relationships proper (civil service and specialised civil service excepted);
- State Civil Service Law<sup>126</sup> – adopted 07.09.2000, in force: 01.01.2001, grounds: not specified, latest amendments: 16.03.2017, civil service relationships;
  - Law on Social Security<sup>127</sup> – adopted: 07.09.1995, in force: 05.10.1995, latest amendments: 29.10.2015, grounds: race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances; covers social services (state, municipal);
  - Consumer Rights Protection Law<sup>128</sup> – adopted: 18.03.1999, in force: 15.04.1999, latest amendments: 22.06.2016, grounds: gender, race, ethnic origin, disability, access to goods and services;
  - Law on the Prohibition of Discrimination of Natural Persons-Economic Operators<sup>129</sup> – adopted: 19.12.2012, in force: 02.01.2013, grounds covered: gender, age, religious, political or other conviction, sexual orientation, disability, race and ethnic origin, access to self-employment; access to goods and services;
  - Law on Education – adopted: 29.10.1998, in force: 01.06.1999, latest amendments: 22.11.2017; grounds: property and social status, race, ethnic origin, gender, religious and political belief, state of health, employment and place of residence; access to education;<sup>130</sup>
  - Ombudsman Law<sup>131</sup> – adopted 06.04.2006, in force: 01.01.2007, grounds: not specified, latest amendments: 25.09.2014, grounds covered: not specified, legal status, functions and tasks of the Ombudsman, as well as the procedures by which the Ombudsman shall perform the functions and tasks specified by the law;
  - Law on Organisations and Foundations<sup>132</sup> – adopted 30.10.2003, in force: 01.04.2004, latest amendments: 02.11.2017, grounds covered: not specified, principles of the activity, organisational structure, liquidation and re-organisation of associations and foundations.

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<sup>126</sup> Latvia, State Civil Service Law (*Valsts civildienesta likums*), 07.07.2000, <http://likumi.lv/doc.php?id=10944>.

<sup>127</sup> Latvia, Law on Social Security (*Likums par sociālo drošību*) 07.09.1995, <http://likumi.lv/doc.php?id=36850>.

<sup>128</sup> Latvia, Consumer Rights Protection Law (*Patērētāju tiesību aizsardzības likums*), 18.03.1999, <http://likumi.lv/doc.php?id=23309>.

<sup>129</sup> Latvia, Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (*Fizisko personu – saimnieciskās darbības veicēju- diskriminācijas aizlieguma likums*), 19.12.2012, <http://likumi.lv/doc.php?id=253547>.

<sup>130</sup> Latvia, Law on Education (*Izglītības likums*), 29.10.1998, <http://likumi.lv/doc.php?id=50759>.

<sup>131</sup> Latvia, Ombudsman Law (*Tiesībsarga likums*), 06.04.2006, <http://likumi.lv/doc.php?id=133535>.

<sup>132</sup> Latvia, Law on Organisations and Foundations (*Biedrību un nodibinājumu likums*), 30.10.2003, <http://likumi.lv/doc.php?id=81050>.

## 1 GENERAL LEGAL FRAMEWORK

### Constitutional provisions on protection against discrimination and the promotion of equality

Article 91 of the *Satversme* (the Latvian Constitution) deals with non-discrimination.

The principle of non-discrimination is enshrined in Article 91, which provides that 'All persons in Latvia shall be equal before the law and the courts. Human rights shall be observed without discrimination of any kind'. It refers to 'discrimination of any kind' without specifying the grounds and thus covers all possible grounds, including the grounds of the two directives – thus also discrimination based on sexual orientation in relation to fields other than employment. As the Constitution stands highest in the hierarchy of legal norms, this permits an argument that a non-exhaustive list of grounds also applies in the cases of laws that only contain an exhaustive list of grounds in their non-discrimination clauses,<sup>133</sup> although in practice this would inevitably complicate matters by requiring weighty arguments to counter the inclusion of the 'one is the exclusion of another' argument.

The right to non-discrimination in the Constitution is also an autonomous right that may apply to any area regulated and protected by the state.

In addition to the non-discrimination clause in Article 91, Article 89 of the Constitution states that 'the state shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia'.

While this recognises the binding force of international treaties without giving express indication as to the place of international treaties in the hierarchy of norms, the Constitutional Court has adopted the doctrine that the norms of the Constitution have to be interpreted in the light of the international human rights standards that are binding upon Latvia.<sup>134</sup> The competence of the court to review the compatibility of international treaties signed or concluded by Latvia with the Constitution, as well as to review the compatibility of national legal provisions with those international treaties concluded by Latvia that do not contradict the Constitution, must be noted in particular.

This indicates the place of international treaties binding on Latvia in the hierarchy of norms: they are below the Constitution yet above the ordinary laws, and ordinary laws and all subordinate provisions must comply with these treaties.

Moreover, in practice it has been accepted that international treaties can be relied upon, and applied directly – to the extent that direct application is possible and the treaties are self-executing – even in the absence of any implementing legislation. The European Convention on Human Rights and Fundamental Freedoms stands out as particularly important, as the Constitutional Court and administrative courts use international legal instruments, and courts of general jurisdiction rely on ECHR, or at least refer to it.

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<sup>133</sup> For example, while Article 3 of the Education Law only guarantees equal rights to receive education to citizens of Latvia, Latvian non-citizens and citizens of the EU states regardless of 'property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence', not mentioning, for example, sexual orientation or age, by referring to Article 91 of the Constitution it is possible to regard these grounds as non-exhaustive.

<sup>134</sup> Latvia, Constitutional Court (*Satversmes Tiesa*) judgment in case No.2000-03-01, 30.08.2000, [http://www.satv.tiesa.gov.lv/wp-content/uploads/2000/03/2000-03-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2000/03/2000-03-01_Spriedums_ENG.pdf). It has been argued that some international treaties, due to the subject they deal with, may even be at the same level as the Constitution. See Ineta Ziemele, 'International Law in the Latvian Legal System' in Ineta Ziemele, (ed) (1998), *Realization of Human Rights in Latvia: Courts and Administrative Procedure* (in Latvian), Riga, 1998, pp.43-44. Mārtiņš Mits, for example, considers that the supremacy of international treaties is a general principle of law, even if it has not been included in a norm of constitutional rank (see Mārtiņš Mits (1999), 'The *Satversme* in the Context of European Human Rights Standards', *Latvian Human Rights Quarterly*, 7-10/1999, p.50). That position is no longer doubted and has been well established and affirmed by practice.



Claimants in the Constitutional Court rely not only on the non-discrimination clause of the *Satversme*, but also on the provisions of international treaties binding on Latvia – primarily the ECHR. In certain cases, the Constitutional Court has examined, inter alia, whether Article 14 of the ECHR has been violated.<sup>135</sup> The reliance on the UN CRPD may increase in the future, as several cases where the courts have referred to it have emerged.<sup>136</sup> Importantly, the Constitutional Court has held that, where the Constitution provides for a higher standard of protection than the one provided for by the international agreements binding on Latvia, the higher standard is applied.

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

These provisions are directly applicable.

The Constitution is generally regarded as directly applicable. It was first in the 'compensation of losses' case<sup>137</sup> that the Constitutional Court held that constitutional norms can be applied directly. While the petitioner argued that there had been discrimination because a change in the law failed to provide for the compensation of losses in his case, the Constitutional Court held that Article 92 of the Constitution could be applied directly and that the absence of an implementing law cannot serve as a ground for the court's refusal to accept the claim.

The provisions cannot be enforced against private actors (in addition to against the state). Specific laws and judicial interpretation are required.

The main problem is that the Constitution is generally not regarded as directly applicable to actions by private individuals, and thus lacks horizontal effect; hence, while it would be possible to argue the applicability of the principle of non-discrimination to the public sphere, even in the absence of any implementing legislation, in the private sphere such legislation is crucial. The case law suggests that international norms – and probably also constitutional norms, although the courts generally still seem to be reluctant to refer to them, or to do more than just refer to them, going into the substance of cases instead – can be of importance when interpreting the duties contained in ordinary legislation and thus, in the combination of the two, can be relied on to impose duties on private parties that may not be obvious from just looking at the legislation; however, one has to keep in mind the need to comply with the requirement that the law be sufficiently precise to enable the individual to foresee the consequences of his actions.

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<sup>135</sup> See, for example, the Constitutional Court judgments in cases No. 2000-03-01, 30.08.2000, [http://www.satv.tiesa.gov.lv/wp-content/uploads/2000/03/2000-03-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2000/03/2000-03-01_Spriedums_ENG.pdf) and 2001-02-0106, 26.06.2001, [http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/02/2001-02-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/02/2001-02-0106_Spriedums_ENG.pdf).

<sup>136</sup> Administrative District Court Case No. A420528911 (*B. v. State Social Insurance Agency (B. pret Valsts Sociālās apdrošināšanas aģentūru)*), 27.09.2013, Administrative District Court Case No. A420571712 (*B. v. Health Inspection (B. pret Veselības inspekciju)*), 02.12.2013.

<sup>137</sup> Latvia, Constitutional Court, Case No. 2001-07-0103, 05.12.2001, available at [http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/07/2001-07-0103\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/07/2001-07-0103_Spriedums_ENG.pdf). In this particular case the petitioner complained of the unconstitutionality of the Law on the Compensation of Losses Suffered as the Result of Illegal or Unsubstantiated Actions of Bodies of Investigation, Prosecutor's Office or Court because the law, allegedly in contradiction with Article 92 of the Constitution providing that 'Everyone, where their rights are violated without basis, has a right to commensurate compensation', failed to provide for the compensation of losses in his case. While the law governed the compensation of losses to, inter alia, persons acquitted by the court, it did not apply to cases such as the petitioner's case when the person found guilty had spent a longer time in pre-trial detention than the period of deprivation of liberty imposed on him by the sentence. The Constitutional Court held that the above-mentioned law only regulates certain cases of compensation, without purporting to be exhaustive, providing for a simplified procedure in those listed cases, whereas in all other cases the person can turn to the court of general jurisdiction basing his claim directly on Article 92 of the Constitution, the court having the duty to adjudicate the case.

Thus, in the Steel case,<sup>138</sup> where the notion of 'illegal attack on dignity and honour' contained in Article 2352 of the Civil Law was at issue, the court relied on, inter alia, Article 89 of the Constitution and the Convention on the Elimination of All Forms of Racial Discrimination to conclude that the respondent's actions had in fact been illegal.

This certainly creates the potential for horizontally applying at least some of the provisions of the Constitution; however, this would need to be confirmed by case law.

Similarly, in the Smagars case,<sup>139</sup> the discrimination, even if nowhere expressly prohibited, was found 'unacceptable in a democratic state based on the rule of law' and was also held to constitute an attack on dignity and honour. In the Sants case,<sup>140</sup> the court referred to the constitutional non-discrimination clause – which contains no listing of grounds – to infer that the Labour Law prohibits differential treatment based on sexual orientation, even if at the time of the adjudication of the case at first instance this ground was not listed expressly.

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<sup>138</sup> Latvia, Latgale District Court of Riga, Case No 29240503 (*George Ronney Steel v. Brivibas partija* (the Liberty party) and *SIA Latvijas Televizija* (Latvian Television Ltd)), 08.09.2003.

<sup>139</sup> Latvia, Riga Regional Court, Case No. C04386004, 11.07.2005, in Latvian at <http://cilvektiesibas.org.lv/site/record/docs/2012/02/06/RS11julijs.pdf>.

<sup>140</sup> Latvia, Riga City Ziemeļu district court, Case No. C32242904047505, 25.05.2005.

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law:

The grounds commonly referred to in Latvian legislation are: race, ethnicity, national origin (in certain cases understood as ethnic origin, in certain cases as citizenship), gender, language, party membership, religious or political 'or other' opinions – which encompasses belief – non-religious, property or social status, position occupied and origin, and sometimes also health condition,<sup>141</sup> place of residence and occupation.

The Labour Law, one of the laws transposing the directives and addressing the issue of discrimination systematically, lists 'race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances' (Article 7(2)).<sup>142</sup>

Article 78 of the Criminal Law protects against the instigation of national, ethnic, racial or religious hatred, and Article 150 protects against the instigation of social hatred based on a person's gender, age, disability or any other features. Article 149.<sup>1</sup> provides a more general protection, making punishable discrimination on the basis of ethnic, national, racial or religious origin, as well as violations of prohibition of discrimination provided for in other legal acts (thus depending on the existence of such legal acts).<sup>143</sup>

Since 2013, the Electronic Mass Media Law has prohibited incitement to hatred and discrimination on the grounds of gender, age, religious, political and other belief, sexual orientation, disability, race or ethnic origin, nationality and other circumstances in audio and audio-visual commercial messages (Article 35).<sup>144</sup>

The Constitution prohibits any kind of discrimination, but it does not mention specific grounds; moreover, it only applies directly in the public sector and generally does not have horizontal effect, which means that there is no prohibition of discrimination in the private sphere unless a specific law is in place. A number of other laws contain the principle of non-discrimination, but only the Labour Law and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators specifically mention all of the grounds covered by the two directives; moreover, some of these laws cover only specified grounds without leaving the list open.

#### 2.1.1 Definition of the grounds of unlawful discrimination within the directives

Latvian anti-discrimination law does not contain any definitions of the grounds of discrimination covered by the directives, except for disability, and they have not been at issue in any of the court cases decided so far.

Disability is included in the Labour Law, the Law on Social Security, the Consumer Rights Protection Law, the Law on Patients' Rights, and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (the Latvian term being *invaliditāte*).

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<sup>141</sup> Latvia, Law on Education, 29.10.1998; Law on Protection of the rights of the child (*Bērna tiesību aizsardzības likums*) <http://likumi.lv/doc.php?id=49096>, 19.06.1998.

<sup>142</sup> Latvia, Ziemeļi District Court, Case No. C32242904047505 25.05.2005, the judgment indicated that, at least so far, sexual orientation had been considered to come under such 'other circumstances'.

<sup>143</sup> Latvia, Criminal Law (*Krimināllikums*), 17.06.1998, <http://likumi.lv/doc.php?id=88966>.

<sup>144</sup> Latvia, Electronic Mass Media Law (*Elektronisko plašsaziņas līdzekļu likums*), 12.07.2010, <http://likumi.lv/doc.php?id=214039>.

This is defined in the Disability Law; it is a long-term or non-transitional (permanent) very severe, severe or moderate level of limited functioning, which affects a person's mental or physical abilities, ability to work, self-care and integration into society.<sup>145</sup> It is divided into three possible degrees of disability, in accordance with the provisions of the law, depending on the gravity of the impairment. The law specifies moderate disability as the loss of 25-59 % of the capacity to work, severe disability as the loss of 60-79 % of the capacity to work, and very severe disability as the loss of 80-100 % of the capacity to work. The purpose of the Disability Law is to determine the procedure for granting disability status and to provide for the necessary support services for persons with disabilities. The same definition is used for the purposes of non-discrimination legislation. The amendments specifying loss of capacity came into force on 1 January 2013. The definition in Latvian law (Article 5(1) of the Disability Law) is narrower than the concept of disability in *Skouboe Werge and Ring*<sup>146</sup> (based on Article 1 of the UN CRPD), as it refers only to those persons who have been conferred one of the three degrees of disability by the State Medical Commission for the Assessment of Health Condition and Working Ability. According to the law a status of predictable disability can also be conferred. This is a status of limited functioning caused by disease or injury that has lasted for six months and that could be expected to result in disability should targeted medical treatment and rehabilitation not be provided in the next six-month period. This may include cases of de facto disability. It is not known how many cases of predictable disability status have been conferred. The issue of whether the term covers any de facto disability may arise, and the UN CRPD's broader definition of 'disability' may provide guidance if a potential 'de facto' case reaches court.

On 29 August 2017, the UN Committee on the Rights of Persons with Disabilities (UN CRPD) published its concluding observations on the initial report by Latvia.<sup>147</sup> The observations pay special attention to Latvia's deficit-oriented approach to disability assessment, mainstreaming of the full concepts of reasonable accommodation in all relevant national and municipal legislation and policies, monitoring of disability discrimination, data collection, and the capacity of monitoring mechanisms. The UN CRPD expressed concern about the deficit-oriented approach to disability assessment, which is based on the medical model. It expressed concern that the Disability Law lacks an explicit prohibition of discrimination on the basis of all types of disability, and does not recognise the denial of reasonable accommodation as disability-based discrimination.

## Race

'Race' would be interpreted using the definition contained in the Convention on the Elimination of All Forms of Racial Discrimination, and one may well imagine that, when applying the non-discrimination provision of the Labour Law, the courts might in certain circumstances have difficulties deciding whether the discrimination was based on a person's race or skin colour, since this law contains a reference to both.

In the Criminal Law (Article 78 on instigation of racial, ethnic and national hatred), the Latvian legislator has introduced an autonomous division of terms by separating the terms 'race', 'national origin' and 'ethnic origin',<sup>148</sup> instead of using an encompassing definition of

<sup>145</sup> Latvia, Disability Law (*Invaliditātes likums*) 25.05.2010, Article 5(1), at <http://likumi.lv/doc.php?id=88966>.

<sup>146</sup> CJEU, joined cases C-335/11 and C-337/11, judgment of 11.04.2013.

<sup>147</sup> UN Committee on the Rights of Persons with Disabilities (2017), *Concluding Observations in relation to the initial report of Latvia*, CRPD/C/LVA/CO/1 at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fLVA%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fLVA%2fCO%2f1&Lang=en).

<sup>148</sup> Incitement to national and racial hatred was introduced in Soviet legislation and retained in the Latvian Criminal Code after the restoration of independence. Incitement to ethnic hatred was added through legislative changes in 2007. Earlier, in 2006, racist motivation was added as an aggravating factor. In 2014, the Parliament amended the Criminal Law adding national/ethnic hatred among the aggravating circumstances. Adding the two motives in addition to racist motivation was recommended in the analyses of court cases under Article 78 to avoid different interpretations and to introduce the same terminology.

'race' provided by sources of international law, e.g. CERD. In court practice, the term 'race' is most often equated with a person's skin colour.

### Ethnic origin

In the case of 'ethnic' origin (*tautība/etniskā piederība* in Latvian), the use of the term is not consistent. In criminal cases, 'ethnic' and 'national' [hatred] are often used as synonyms.<sup>149</sup> The confusion of terms is possibly related to the Russian word '*natsionalnost'*' (*национальность*; in Latvian – '*tautība*'), which means 'ethnic origin' and was used in Soviet identity documents.<sup>150</sup>

This is also evident in the only ethnic discrimination case to date, *Sanita Kozlovskā v. SIA Palso* in 2006, where the employer had indicated the accent (in Latvian) of the claimant – a Roma – as the reason for refusing to employ her, and the court held that the claimant had been discriminated against on the basis of her national origin (ethnicity). The decision refers to the claimant as having 'Gypsy ethnicity'.<sup>151</sup>

There is no definition of 'age' in the Latvian legislation.

There is no definition of 'religion or belief' in the Latvian legislation.

There is no definition of 'sexual orientation' in the Latvian legislation.

### 2.1.2 Multiple discrimination

In Latvia, the prohibition of multiple discrimination is not included in the law.

In Latvia, the following case law deals with multiple discrimination.

In the only case of multiple discrimination – the *Stūriņa* case<sup>152</sup> – this was found at the court's own initiative, and the line of reasoning was not well developed.

In the *Stūriņa* case, decided by Cēsu district court on 05 July 2005, in which the court held that the claimant, who from 1997 to 2004 had regularly been employed by the municipality for the winter season at the heating plant, had been discriminated against on the basis of her gender and property status by not being employed again in the 2005 season, multiple discrimination was found at the court's own initiative. The claimant had only argued gender discrimination, not property status-based discrimination. The municipality had, instead of employing the claimant, employed another person who had not even responded to the call for applications and was already employed by the municipality, the municipality arguing that 'the remuneration of the employees of the municipality is low', thus supposedly taking into account their low income ('property status'). However, this line of reasoning is not well developed, and it would be speculative to make any general conclusions about how the courts would handle multiple discrimination cases. In this particular case, although multiple discrimination was established, the court did not specifically mention that it had an impact on the amount of moral or material damages awarded.

<sup>149</sup> Latvia, Supreme Court (2012). Court Practice in Criminal Cases Concerning Incitement to National Ethnic and National Hatred, in Latvian at <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/>.

<sup>150</sup> A fifth line in Soviet passports was '*natsionalnost'*'. In: Between Minority Rights and Civil Liberties: Russia's Discourse Over 'Nationality' Registration and the Internal Passport, *Nationalities Papers* 33(2): 211–229 (2005), at <https://www.prio.org/Publications/Publication/?x=3202>.

<sup>151</sup> Latvia, Jelgava Court. Case No. 15066406, 25.05.2006, available at [http://cilvektiesibas.org.lv/media/attachments/29/01/2013/sk\\_palso.pdf](http://cilvektiesibas.org.lv/media/attachments/29/01/2013/sk_palso.pdf).

<sup>152</sup> Latvia, Cēsu district court, Case No.C11019405 (*Anga Stūriņa v. Straupe municipal council*), 05.07.2005.

### 2.1.3 Assumed and associated discrimination

#### a) Discrimination by assumption

In Latvia, national law does not explicitly prohibit discrimination based on perception or assumption of what a person is.

There is no case law concerning discrimination by assumption.

#### b) Discrimination by association

In Latvia, national law (including case law) does not expressly prohibit discrimination based on association with persons with particular characteristics.

However, it might possibly be argued that protection against discrimination exists 'based on other circumstances' where the list of the grounds is left open. National law does not explicitly prohibit discrimination by association, with the exception of Article 3 of the Law on the Rights of the Child, which refers to the race etc. not only of the child, but also of their parents, guardians and family members, thus protecting against discrimination by association, although to a limited extent only.

## 2.2 Direct discrimination (Article 2(2)(a))

#### a) Prohibition and definition of direct discrimination

In Latvia, direct discrimination is prohibited in national law. It is defined.

Article 29(5) of the Labour Law states that 'Direct discrimination exists if in a comparable situation the person,<sup>153</sup> based on her gender, is, was or may be treated less favourably than another person'. Article 29(9) applies the protection against discrimination, including this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances. This definition (instead of the reference to gender only in the main clause directly listing the same grounds, with the exception of sexual orientation in an open-ended provision) is also used in the amended Law on Social Security. The same definition is used in the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4(2)) in relation to grounds of gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin.

The Consumer Rights Protection Law (Article 3.<sup>1</sup>(6)) limits the same definition to the grounds of gender, race, ethnic origin and disability, while the Law on Support to Unemployed Persons and Job Seekers limits it to gender, race and ethnic origin. The Law on Education (property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence) refers to the definitions used in the Consumer Rights Protection Law.

While technically the Labour Law applies only to employment relationships<sup>154</sup> (including pre-contractual relationships, as indicated by both the reference in Article 29(1) to 'establishing employment relationship' and Article 34, dealing with the consequences of violating the prohibition of differential treatment when establishing an employment relationship) and to employment-related claims, thus by definition excluding self-

<sup>153</sup> The term 'person' cannot be interpreted as excluding protection from direct discrimination of a group. In these cases, *argumentum a fortiori* should be applied, i.e. if a person cannot be treated less favourably, then it can be assumed that nor can a group.

<sup>154</sup> It must be noted that, after the 02.11.2006 amendments to the State Civil Service Law, the provisions of the Labour Law concerning prohibition of differential treatment apply to civil service relationships, including specialised civil service relationships; the latter includes police, border guards, individuals *in diplomatic or consular service and certain other institutions*.

employment and related claims, which are regulated in the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, it is not inconceivable and, indeed, it is very likely, at least as long as there is no general anti-discrimination law or definitions in other laws apart from the Law on Social Security and the Consumer Rights Protection Law, that this definition could be used in other cases when the issue of direct discrimination is raised, especially since it would also follow from the international treaties that are binding on Latvia.

The Criminal Law does not contain a definition of discrimination, but instead refers, in Article 149.<sup>1</sup>, to 'race or ethnic discrimination or the violation of the prohibition of discrimination provided for in other legal acts' – thus de facto referring back to the Labour Law definitions.

#### b) Justification of direct discrimination

Provisions authorising justification of discrimination do not distinguish between direct and indirect discrimination, or between the grounds covered by the directives and other grounds for differential treatment.

Article 2.<sup>1</sup>(1) of the Law on Social Security refers to the non-exhaustive list of grounds of differential treatment (race, ethnicity, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, or other circumstances) without distinguishing those grounds covered by the directives. Article 2(6) provides that 'differential treatment (excluding harassment) associated with any of the grounds shall only be acceptable in such cases if such treatment is objectively justified with a legitimate purpose, for the achievement of which the selected means are proportionate'.

The amendments to the laws concerning discrimination (including direct discrimination) have been adopted with the purpose of transposing the directives into national law, but in separate instances they lack sufficient precision. In such cases, it remains for the courts to consult the text of the directives.

It would appear that Latvian legislation provides for a wider range of exceptions for direct race discrimination than the Race Equality Directive, extending beyond a general occupational requirement. The same provisions (an exception being the list of specific grounds) are reiterated in the Education Law (Article 3.<sup>1</sup>(1-2) – 11 grounds, closed list), in the Law on Support to Unemployed Persons and Job Seekers (Article 2.<sup>1</sup>(1-2) on race, ethnic origin and gender), in the Consumer Rights Protection Law (Article 3.<sup>1</sup>(1-2) on race, ethnic origin, gender and disability), and in the Law on the Prohibition of Discrimination of Physical Persons-Economic Operators (Article 3(1)1,2 – no reference to genuine occupational requirement). The differential treatment of economic operators who are persons with disability is permissible in cases of an unreasonable burden for the other party, and similarly in the context of goods and services (Article 3.1(2)).

### **2.2.1 Situation testing**

#### a) Legal framework

In Latvia, situation testing is not clearly permitted in national law.

In Latvia, national law is silent on the issue of situation testing, thus neither expressly permitting nor prohibiting it, and there is no case law on it.



To some extent it might be considered that in the *Smagars* case<sup>155</sup> the claimant himself did the situation testing, as after the first instance of being refused admittance to the nightclub he returned with a TV team for 'testing', yet this does not reveal anything of how the courts would react to a test carried out by a person other than the victim of discrimination himself. The crucial issue would be whether the court would consider situation testing as being of relevance to the case at hand, since, according to Article 94 of the Civil Procedure Law, the court can only accept evidence which is of relevance to the case, and the defendant might conceivably argue that the situation tested is distinct from the case under consideration. In the absence of relevant case law, it is not possible to predict how the courts would treat such testing, and the extent of the willingness of the courts to consider it as evidence based on the argument of experience of other countries would probably depend on each particular court, although it is undeniable that developments in other countries would certainly influence the Latvian courts and statute law. Thus, the means of proof in this case would be the testimonies of the witnesses, and the general rules concerning such testimonies (such as the prohibition of hearsay, rules on privileged witnesses etc.) would apply.

#### b) Practice

In Latvia, situation testing is rarely used in practice.

The Latvian Centre for Human Rights (LCHR), an NGO, conducted situation testing at nightclubs during the night of 5-6 March 2011.<sup>156</sup> This was the first such testing carried out in Latvia. The aim of this was to promote situation testing as a method for collecting information on the treatment of different groups, as well as to highlight the risks of racial and ethnic discrimination. In five nightclubs in Riga, no discrimination of this sort was identified. However, the event led to media reporting and to awareness raising about situation testing as a method of proving discrimination. This situation testing was conducted as part of a Europe-wide initiative, 'the first Europe-wide testing night against racial discrimination', coordinated by the European Grassroots Antiracist Movement (EGAM).<sup>157</sup> The activists tested nightlife venues in the main cities of 14 European countries; 35 venues in 15 cities were found to be carrying out discriminatory practices.

A lesbian couple conducted situation testing in February 2016, when the Riga Minibus Service (RMS) organised a Valentine's Day promotion offering a free ride to couples who kissed in front of the minibus driver. The offer was only extended to heterosexual couples, while same sex couples were expressly excluded. The Ombudsman's Office found the promotion discriminatory,<sup>158</sup> however the company decided not to continue the promotion in 2018.

There has not been any public, academic or parliamentary discussion on the adoption of situation testing into national law apart from the launch of a brochure on situation testing by the Latvian Centre for Human Rights in 2014.<sup>159</sup>

### 2.3 Indirect discrimination (Article 2(2)(b))

#### a) Prohibition and definition of indirect discrimination

<sup>155</sup> Riga Regional Court, Case No. C04386004, 11.07.2005.

<sup>156</sup> Latvian Centre for Human Rights, *Situācijas testēšanas eksperiments cīņā pret rasu diskrimināciju*, [http://cilvektiesibas.org.lv/lv/media-materials/situacijas-testesanas-eksperiments-cina-pret-rasu/](http://cilvektiesibas.org.lv/lv/media-materials/situacijas-testesanas-eksperiments-cina-pret-rasu-/).

<sup>157</sup> Information about the first Europe-wide testing night is available in English at (accessed on 22.08.2016): <http://www.scribd.com/doc/55608978/First-European-Testing-Night-EGAM-Report>.

<sup>158</sup> Republic of Latvia Ombudsman (LR Republikas Tiesībsargs) (2016), *ATZINUMS pārbaudes lietā Nr.2016-3-26G*, at [http://www.tiesibsargs.lv/uploads/content/atzinumi/Atzinums\\_RMS\\_Valentindienas\\_skupsta\\_biletas\\_01062\\_016.pdf](http://www.tiesibsargs.lv/uploads/content/atzinumi/Atzinums_RMS_Valentindienas_skupsta_biletas_01062_016.pdf).

<sup>159</sup> Latvian Centre for Human Rights (2014), *The Use of Situation Testing in Proving Discrimination (Situācijas testēšanas izmantošana diskriminācijas pierādīšanai)*, in Latvian at <http://cilvektiesibas.org.lv/site/attachments/04/06/2014/R08xx-Brosura64lpp-2dala.pdf>.



In Latvia, indirect discrimination is prohibited in national law. It is defined.

The Labour Law contains a definition of indirect discrimination that complies with the definition used by the directives. Article 29(6) of this law provides that: 'Indirect discrimination exists if an apparently neutral provision, criterion or practice causes adverse consequences for persons belonging to one gender, except in cases where such provision, criterion or practice is objectively justified by a legitimate aim, the means for attaining which are proportionate.' Again, Article 29(9) applies the protection against discrimination, including under this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances. The same definition is in the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4(2)) on gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin). This definition is also found in the Consumer Rights Protection Law (Article 3.<sup>1</sup>(6) in relation to four grounds – gender, race, ethnic origin and disability) and in the Law on Support to Unemployed Persons and Job Seekers (Article 2.<sup>1</sup>(4)).

The Education Law (Article 3.<sup>1</sup>(8)),<sup>160</sup> refers to definitions used in the Consumer Rights Protection Law.<sup>161</sup> It is very likely that this definition would be used for interpreting the notion of indirect discrimination in other laws that contain no definition of it. The Law on Social Security (Article 2.<sup>1</sup>(4)), however, retains the old definition: 'indirect discrimination exists if in a comparable situation an apparently neutral provision, criterion or practice causes or may cause adverse consequences to persons in connection with grounds of race, ethnicity, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, or other circumstances.'

#### b) Justification test for indirect discrimination

The provisions authorising justification of discrimination do not distinguish between direct and indirect discrimination, or between the grounds covered by the directives and other grounds for differential treatment. The test for justification is the same one as for direct discrimination: legitimate aim and proportionate means ('where such provision, criterion or practice is objectively justified by a legitimate aim the means for attaining which are proportionate').

Article 2.<sup>1</sup>(4) of the Law on Social Security should be implemented in conjunction with 2.<sup>1</sup>(1) which provides a non-exhaustive list of grounds of differential treatment which are considered to be discrimination (unjustified differential treatment on prohibited grounds). Thus, the justification test for indirect discrimination of Article 2.<sup>1</sup>(4) consisting of a legitimate aim and the principle of proportionality is linked to the grounds listed in Article 2.<sup>1</sup>(1).

#### c) Comparison in relation to age discrimination

There are no specific provisions specifying a comparison concerning the ground of age, and there is no case law either.

### 2.3.1 Statistical evidence

#### a) Legal framework

In Latvia, there are national rules permitting data collection.

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<sup>160</sup> Latvia, Law on Education, 29.10.1998.

<sup>161</sup> Latvia, Law on Support to Unemployed Persons and Job Seekers (*Bezdarbnieku un darba meklētāju atbalsta likums*), 09.05.2002, <http://likumi.lv/doc.php?id=62539>.

The main law regulating data collection is the Law on the Protection of Data of Natural Persons,<sup>162</sup> which defines as sensitive data the data on a person's race, ethnic origin, religious, philosophical or political conviction or trade union membership, as well as data which provide information on a person's health (which would cover disability) or sexual life (apparently, even if not expressly, covering sexual orientation). Article 11 in principle prohibits the processing of sensitive data, but it contains a range of exceptions, among which, in addition to the written agreement of the data subject that their data may be processed, are: when the legal norms governing an employment relationship provide for data processing without the agreement of the data subject; when the processing of data is necessary for the purposes of medical treatment; when processing the data is necessary for the provision of social aid and is performed by the aid providers; or when the processing of data is needed for statistical studies performed by the Central Statistical Bureau. All data processing systems need to be registered with the State Data Inspectorate, which may refuse registration if the law is not complied with.

Thus, in principle, employers are prohibited from keeping records in respect of ethnic or racial origin, disability, religion or belief or sexual orientation. However, there are obviously exceptions in professions that involve work with people where a medical certificate is needed, and in cases of disability in so far as special accommodation is required. Theoretically, it might also be possible to keep a record of an employee's religious affiliation in case the employer wanted to enable them to observe their particular religious holidays; however, this is not the practice in Latvia.

In Latvia, national law is silent on the issue of the use of statistical evidence in order to establish indirect discrimination.

The gathering of evidence for the purposes of civil proceedings is governed by the Civil Procedure Law, Articles 110-112 of which determine what written evidence encompasses information on facts of relevance to the case, including data showing a prima facie case of discrimination in any form. Article 111 enables a party to request to the court, by means of a motivated request, that certain evidence be provided, describing it and explaining why they think that this evidence is in the possession of the person concerned. Article 112 provides for the right of the judge, at the request of one of the parties, to require that public entities or other legal or natural persons – which thus includes the respondents, even if this is not expressly mentioned – provide the necessary evidence. If the person concerned does not provide the required evidence, while not denying that it is in her possession, the court may hold that the fact for which this evidence was required as proof has been proved. However, if it is impossible for the person to provide this evidence, they must notify the court explaining the reasons why it is impossible.

Since these provisions have not so far been used in the context of discrimination cases by the courts of general jurisdiction, it is difficult to predict what the difficulties might be in relation to such requests, for instance how specific the courts would require the description of the sought evidence to be, and how much extra effort might be required from the respondent to prepare evidence for the presentation. However, the legal framework for requiring that certain data be provided certainly exists.

It must also be noted that one court that regularly makes use of statistical data is the Constitutional Court. Both in a case where there was a challenge regarding the age limit for occupying the post of university professor,<sup>163</sup> and in another case where the age limit for holding a position in the civil service<sup>164</sup> was challenged, the statistical evidence was important for the decision reached. In one case, it showed the inappropriate character of

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<sup>162</sup> Latvia, Personal Data Protection Law (*Fizisko personu datu aizsardzības likums*), 23.03.2000, <http://likumi.lv/doc.php?id=4042>.

<sup>163</sup> Latvia, Constitutional Court, Case No. 2002-21-01, at [http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-21-01\\_Spriedums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-21-01_Spriedums.pdf).

<sup>164</sup> Latvia, Constitutional Court, Case No. 2003-12-01, at <http://likumi.lv/doc.php?id=82289>.

the limitation, namely the inability to attain the aim sought, and in the other case, it demonstrated the lack of impact of the provision challenged. Hence also for the courts of general jurisdiction, the idea of using statistical evidence would not be a complete novelty, and the reference to the experience of other countries might play some role as well.

b) Practice

In Latvia, statistical evidence in order to establish indirect discrimination is not used in practice.

The general lack of case law precludes discussion of any reluctance to use statistical data concerning the Constitutional Court (see above, section a).

There is no case law in this area.

## **2.4 Harassment (Article 2(3))**

a) Prohibition and definition of harassment

In Latvia, harassment is prohibited in national law. It is defined.

The Labour Law defines harassment as the 'subjection of a person<sup>165</sup> to such conduct unwanted by this person, including conduct of sexual character, which is related to the gender of the person, if the purpose or effect of this conduct is violating the dignity of the person or creating an intimidating, hostile, degrading or offensive environment' (Article 29(7)). The provision covers both harassment and sexual harassment. Again, Article 29(9) applies protection against discrimination, including under this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances. This definition (with reference to prohibited grounds, which in the case of the Law on Social Security do not expressly include sexual orientation) is further used in the Law on Social Security (Article 2.<sup>1</sup>(5)), the Consumer Rights Protection Law (Article 3.<sup>1</sup>(8) on gender, race and ethnic origin and disability), the Law on Support to Unemployed Persons and Job Seekers (Article 2.<sup>1</sup>(6) on race, ethnicity and gender), and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4(4)).

In Latvia, harassment explicitly constitutes a form of discrimination.

Various legal acts (listed below) prohibit harassment (as defined by Labour Law) against a person or a group of persons as a form of discrimination. Protection against discrimination is provided in employment, including self-employment, social protection, social advantages, access to goods and services and education. Article 29(4) of the Labour Law specifically provides that harassment shall be considered as discrimination as do Article 2.<sup>1</sup>(5) of the Law on Social Security, Article 3.<sup>1</sup>(7) of the Consumer Rights Protection Law, Article 2.<sup>1</sup>(5) of the Law on Support to Unemployed Persons and Job Seekers and Article 4(3) of the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators. The Education Law refers to the definition and types of discrimination explained in Consumer Rights Protection Law, Article 3.<sup>1</sup>(8).

One may argue that, because harassment is qualified by these laws as a form of discrimination, the prohibition of harassment can be regarded as implied in those anti-discrimination provisions contained in other laws that do not expressly refer to harassment,

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<sup>165</sup> The term 'person' cannot be interpreted as excluding protection from direct discrimination of a group. In these cases, *argumentum a fortiori* should be applied, i.e. if a person cannot be treated less favourably, then it can be assumed that nor can a group.

yet, in the absence of any harassment-related case law, this remains only a theoretical possibility.

One may also argue that the gravest cases of harassment are also covered by Article 156 of the Criminal Law, which provides for the punishment of intentional violations of a person's dignity or honour orally, in writing or by conduct, which could be applied to cases when the person's dignity is offended by reason of membership of some group or particular characteristic, for example sexual orientation or gender. However, there is no case law confirming such an interpretation, and this thus remains only a theoretical possibility.

#### b) Scope of liability for harassment

Where harassment is perpetrated by an employee in Latvia, the employee is liable. Liability of the employer would require judicial interpretation.

In cases of harassment, by relying on the definition of harassment as provided by the Labour Law, it could be argued that 'subjection to unwanted conduct' can also be carried out by the employer by failure to oppose such conduct by his employees, yet this is only a suggestion; it is not stated expressly in the law, nor is there any case law confirming the readiness of the courts to accept such an interpretation.

In the case of employers, Article 1782 of the Civil Law could additionally be applied, stating that the employer has to exercise due care when selecting his employees and must verify their ability to fulfil their duties, otherwise they may be held liable for the damages caused by them; in cases where the employer is the state, municipality or some other public legal person covered by the provisions of the Administrative Procedure Law, compensation for losses and for moral damages can be requested from the employer. The responsibility of the employer was at issue in the Smagars case,<sup>166</sup> where the respondent argued that the employer can only be held responsible for pecuniary damages caused by its employees, not for moral damages; however, the court held that the anti-defamation provision of the Civil Law did not exclude legal persons from its scope.

A co-worker or a client can be held liable according to the anti-defamation provision under Article 1635 of the Civil Law.

However, this would not apply to trade/professional associations, nor can employers be held responsible for the actions of third parties – there are no provisions to this effect in national law, nor is there any case law.

## **2.5 Instructions to discriminate (Article 2(4))**

#### a) Prohibition of instructions to discriminate

In Latvia, instructions to discriminate are prohibited in national law. Instructions are not defined.

In Latvia, instructions constitute a form of discrimination.

Article 29(4) of the Labour Law expressly states that 'instruction to discriminate shall also be considered discrimination'. Therefore, the relevant provisions on prohibition of discrimination are also applicable to instruction to discriminate.

This position is adhered to in the Consumer Rights Protection Law (Article 3.1(7)) and the Law on Social Security (Article 4(3)), as well as in the amendments to the Law on Support to Unemployed Persons and Job Seekers (Article 2.1(5)), in the Law on Patients' Rights

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<sup>166</sup> Latvia, Riga Regional Court, Case No. C04386004, 11.07.2005.

(Article 3.<sup>1</sup>(8)), in the Education Law (in Article 3.<sup>1</sup>(8)), reference is made to the definition of discrimination and forms of discrimination in the Consumer Rights Protection Law), and in the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4(2)). While there is no comparable provision in any other law in force, due to the fact that instruction to discriminate is considered under the Labour Law to be discrimination, one may argue that the position could also be applied to other laws containing anti-discrimination provisions but without express reference to instructions to discriminate.

The term 'instruction to discriminate' is applied poorly in the case law, but nevertheless covers all cases in which discrimination took place based on a hierarchy in relations in every sphere where discrimination as such is prohibited (employment, including self-employment, education, social protection, social advantages, access to goods and services).

Additionally, Article 149<sup>1</sup> of the Criminal Law refers to 'violation of the prohibition of discrimination provided for in other legal acts'. Thus, by using the Labour Law definition, it could be argued that the instruction to discriminate is also covered.

b) Scope of liability for instructions to discriminate

In Latvia, the instructor and the discriminator are liable.

Since the Labour Law (Article 29(4)) as well as the Law on Social Security (Article 2.<sup>1</sup>(2)), the Consumer Rights Protection Law (Article 3.<sup>1</sup>(7)), the Law on Support to Unemployed Persons and Job Seekers (Article 2.<sup>1</sup>(5)), and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 2.<sup>1</sup>(5)) provide for instruction to discriminate as a separate form of discrimination, it can be argued that, in such cases, both the instructor and the direct perpetrator would probably be held liable for two separate offences. However, there is no case law to confirm this interpretation. Similarly, in the cases that might come under the Criminal Law provisions, there would be two offences of discrimination and of incitement.

However, this would not apply to trade/professional associations, nor can employers be held responsible for the actions of third parties – there are no provisions to this effect in national law, nor is there any case law.

There are no specific provisions regarding the liability of legal persons for instructions to discriminate.

## **2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)**

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Latvia, the duty to provide reasonable accommodation is included in the law. It is defined.

Article 7(3) of the Labour Law provides that 'To ensure implementation of the principle of equal rights in relation to persons with disabilities it is the duty of the employer to take measures required by the circumstances in order to adapt the working environment, promote the possibilities of persons with disabilities to establish labour relationships, fulfil work duties, be promoted or undergo professional training to the extent that such measures do not create a disproportionate burden for the employer.'

In 2010 Latvia ratified the UN Convention on the Rights of Persons with Disabilities, which has a wider applicability as, in its context, the concept of reasonable accommodation applies to 'all human rights and fundamental freedoms'. Given that it can be relied upon directly in the Latvian courts, the convention has potentially far-reaching consequences – perhaps less so in the context of labour relationships, as it is felt that EU legal acts are 'closer', more 'user-friendly' and more easily enforceable, but in other contexts it can definitely be invaluable.

#### b) Practice

There are no further detailed provisions permitting assessment of the disproportionality of the burden. However, according to Cabinet of Ministers regulations No.75, the costs of providing reasonable accommodation:

- for employers hiring unemployed persons with disabilities can be reimbursed up to EUR 711;
- a contribution (of at least the amount of the official minimum salary) may be made to the salary of disabled person for up to 12 months;
- and provision may be made to cover the services of a sign language interpreter (EUR 10.50 per hour, in proportion to the hours worked by the person with disability, but for no more than 40 hours per week), occupational therapists or other specialists whose services are provided to facilitate the employment of the disabled person, thus helping to alleviate the burden on the employer.<sup>167</sup>

In 2011 a court ruled that the employer had breached the equality principle (under Article 7(3) of the Labour Law) by failing to fulfil the obligation to provide for reasonable accommodation (in the specific case, adjustment of the workplace and the provision of parking space closer to the workplace could not be considered a disproportionate burden to the employer).<sup>168</sup>

#### c) Definition of disability and non-discrimination protection

The very concept of disability may be problematic, since Latvian law requires official recognition of disability, and hence the issue may arise whether it covers only those disabilities that have received official qualification and as the result of which the person's status as disabled has been officially recognised, or whether it covers any de facto disability. This can be problematic and can amount to insufficient implementation unless the courts, when confronted with this issue, interpret the notion of disability in a compatible way.

The definition issue, of course, would have an impact on the issue of reasonable accommodation. Thus far, one court case on dismissal on grounds of disability,<sup>169</sup> where it was established that the employer had breached the equality principle by failing to provide for reasonable accommodation, concerned an employee who had been officially conferred the status of a disabled person.

At the end of 2017, the Ombudsman's Office issued guidelines to employers on reasonable accommodation for persons with disabilities (mobility disability, vision or hearing

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<sup>167</sup> Latvia, Cabinet of Ministers Regulations No. 75 on the procedure for the organisation and financing of active employment measures and preventive activities reducing unemployment and the selection principles of implementers of measures (*Ministru kabineta noteikumi Nr.75 Noteikumi par aktīvo nodarbinātības pasākumu un preventīvo bezdarba samazināšanas pasākumu organizēšanas un finansēšanas kārtību un pasākumu īstenotāju izvēles principiem*), 25.01.2011, available in Latvian at <http://likumi.lv/ta/id/225425>.

<sup>168</sup> Latvia, Kurzeme Regional Court, Case No. C40066110 (V. Trusēvičs v. SIA Bio-Venta [Bio-Venta Ltd]), 21.09.2011.

<sup>169</sup> Latvia, Kurzeme Regional Court, Case No. C40066110 (V. Trusēvičs v. SIA Bio-Venta [Bio-Venta Ltd]), 21.09.2011.

impairments (total and partial loss), and autism spectrum disorder).<sup>170</sup> The guidelines include reasonable accommodation in offices, the area of services and commerce, in factories, agriculture, forestry and fisheries, and information on the most popular professions for employees with the different types of disabilities. The guidelines build on contributions by five Latvian NGOs working with people with specific disabilities. The guidelines do not indicate whether they relate to people officially recognised as persons with disabilities under the Disability Law or to all people with disabilities.

- d) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Latvia, there is no explicit duty to provide reasonable accommodation for people with disabilities outside the employment field. However, such a duty may arise under the UN CRPD obligations.

The Law on Education, however, does mention special education adapted to the needs of persons with special needs or health problems (Article 42).

Regulations No.710<sup>171</sup> on the Provision of General Basic Education and General Secondary Education Institutions According to Special Needs<sup>172</sup> state the necessary provisions of general education institutions concerning the integration of students with special needs in mainstream schools. All provisions are divided into institutional facilities (i.e. additional rehabilitation measures, provision of teaching assistants, additional pedagogical staff and educational programmes) and utilities of premises (accessible environment etc.). However, no concepts of reasonable accommodation or disproportionate burden are used.

There has been only one court case concerning reasonable accommodation beyond employment. The individual concerned, who had a psychosocial disability, was prohibited from receiving the old-age pension (*vecuma pensija*) due to the late submission of documents. The court insisted that reasonable accommodation should be provided in the form of additional time for submitting the required documents; otherwise, the limitation on the person's social guarantees would not be proportional and would amount to discrimination on the grounds of disability. The court referred to Article 109 of the Latvian Constitution and Article 28 of UN CRPD as the legal basis for its decision.<sup>173</sup>

- e) Failure to meet the duty of reasonable accommodation for people with disabilities

In Latvia, failure to meet the duty of reasonable accommodation does not count as discrimination.

The Labour Law does not specifically provide for a shift in the burden of proof in relation to reasonable accommodation. While the issue of equal rights that is dealt with in Article 7, which contains reasonable accommodation, and the prohibition of differential treatment dealt with in Article 29 (in which the provision on the shift in the burden of proof is included) are undeniably related, it is not immediately obvious that a shift in the burden of proof would also apply to claims of reasonable accommodation. One might wish for this to be stated expressly in the law, and the lack of case law does not allow for a prediction of how

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<sup>170</sup> Ombudsman's Office (*Tiesībsargs*) (2017), *Pielāgota darba vide darbiniekiem ar invaliditāti. Informatīvais materiāls darba devējiem*, 133 p., available in Latvian at [http://www.tiesibsargs.lv/uploads/content/publikacijas/vadlinijas\\_dd\\_vides\\_pielagosana\\_1515490591.pdf](http://www.tiesibsargs.lv/uploads/content/publikacijas/vadlinijas_dd_vides_pielagosana_1515490591.pdf).

<sup>171</sup> Latvia, Cabinet of Ministers Regulations No.710 on the Provision of General Basic Education and General Secondary Education Institutions According to Special Needs (*Ministru kabineta noteikumi Nr.710 Noteikumi par vispārējās pamatizglītības un vispārējās vidējās izglītības iestāžu nodrošinājumu atbilstoši izglītojamo speciālajām vajadzībām*), 16.10.2012, available in Latvian at <http://likumi.lv/doc.php?id=252163>.

<sup>172</sup> 'Special needs' is used in respect to education and, apart from children with disabilities, also covers some children who do not have a disability as defined by the Law on Disability.

<sup>173</sup> Administrative Regional Court, Case No A420528911, B. v. State Social Insurance Agency (B.V. pret Valsts Sociālās apdrošināšanas aģentūru), 27.09.2013.



the courts would treat such cases and this procedural issue in the absence of such express provision.

f) Duties to provide reasonable accommodation in respect of other grounds

In Latvia, there is no duty to provide reasonable accommodation in respect of other grounds in the public and private sectors.

Some instances of reasonable accommodation on the ground of religion are provided for in the Labour Law: if an employee's working day has been transferred to a Saturday, the employee can arrange, if it is agreed by the employer, to work on another day because of their religious beliefs (Article 113 (4, 5)).<sup>174</sup> However, this does not amount to a duty as it remains at the discretion of the employer.

g) Accessibility of services, buildings and infrastructure

In Latvia, national law requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way.

While Latvian law (Construction Law Article 4(6))<sup>175</sup> does require that buildings and infrastructures meant for public use be designed in a way that facilitates the access of persons with disabilities, this has never been viewed in the context of the directive. The law also authorises the Cabinet of Ministers to issue construction standards to provide technical requirements for the environmental accessibility of structures (Article 2(1)3). This includes access to healthcare facilities.<sup>176</sup>

Nevertheless, access to public buildings, including courts, often remains difficult.

There is no monitoring mechanism for compliance with requirements concerning access to public buildings in issuing construction permits and putting buildings into service. Local authorities have been tasked with the issuance of construction permits and approving buildings as they are put into service.

Article 1(3) of the Medical Treatment Law stipulates that medical treatment institutions may provide medical treatment only if they conform to the specific mandatory accessibility requirements as determined by the Cabinet of Ministers.<sup>177</sup> Various deadlines to meet these requirements were fixed, the final coming into force in 2014. However, difficulties were encountered in meeting them (technical difficulties, issues with historical buildings).

Amendments to the Cabinet of Ministers Regulations No.60, on 'Mandatory Requirements for Medical Treatment Institutions and their Structural Units',<sup>178</sup> entered into force on 1

<sup>174</sup> Latvia, Labour Law (*Darba likums*), Article 113 (4, 5), 20.06.2001, <http://likumi.lv/doc.php?id=26019>.

<sup>175</sup> Latvia, Construction Law (*Būvniecības likums*), 09.07.2013, available at <http://likumi.lv/doc.php?id=258572>; the principle of environmental accessibility is defined as one of the construction principles, according to which an environment is created during the construction process in which any person may move with comfort and use the structure according to its purpose of use.

<sup>176</sup> Detailed standards concerning accessibility of public buildings were adopted on 30.06.2015, Cabinet of Ministers Regulation No. 331 on Latvian construction standard LBN 208-15, 'Public Buildings' (*Ministru kabineta noteikumi Nr. 331 Noteikumi par Latvijas būvnormatīvu LBN 208-15 'Publiskas būves'*). Section 4 of the regulations sets requirements concerning the environmental accessibility of public buildings, such as the provision of solid wheelchair ramps, entrances and corridors, elevators, toilets and showers or the availability of information for persons with hearing and visual impairments – available in Latvian at <https://www.vestnesis.lv/ta/id/274995-noteikumi-par-latvijas-buvnormativu-lbn-208-15-publiskas-buves>.

<sup>177</sup> Latvia, Medical Treatment Law (*Ārstniecības likums*), Article 55, 12.06.1997, available in Latvian at: <http://likumi.lv/ta/id/44108>.

<sup>178</sup> Latvia, Cabinet of Ministers Regulations No. 1463, Amendments to Cabinet of Ministers 20.01.2009 Regulations No. 60, Mandatory Requirements for Medical Treatment Institutions and their Structural Units (*Ministru kabineta noteikumi Nr.1463 Grozījumi Ministru kabineta 2009.gada 20.janvāra noteikumos Nr.60 "Noteikumi par obligātajām prasībām ārstniecības iestādēm un to struktūrvienībām"*), 10.12.2013, available in Latvian at: <http://likumi.lv/doc.php?id=263208>.



January 2014. The general requirement is that the healthcare institution shall be placed in a suitable building, providing accessibility for persons with functional disabilities. The amendments also provide that those institutions that are already registered at the Register of Medical Treatment Institutions and that do not yet fully comply with the accessibility requirements for persons with functional disabilities shall ensure that it is possible for persons with functional disabilities to receive healthcare services (Paragraph 4.1), as well as providing brief and clear information about how healthcare services are provided for persons with functional disabilities at the institution (Paragraph 4.2). Healthcare centres and hospitals (i.e. large institutions) are required to ensure that persons with functional disabilities have independent access into the institution. Healthcare institutions are required to publish information about available healthcare services and accessibility on their webpage (Paragraph 4.<sup>1</sup>).

There has been one case with a positive outcome concerning physical access to healthcare facilities where courts have referred to domestic legislation and the UN CRPD.

In 2013, a physically disabled person in a wheelchair with a new-born baby was unable to physically access several health institutions over a certain period of time and complained to the Health Inspectorate, which in most cases failed to establish that the health institutions had violated the Construction Law. The complainant challenged the decisions of the Health Inspectorate before the administrative district court. The claimant was awarded moral compensation amounting to LVL 300 (EUR 427). The court imposed an obligation on the HI to issue a written apology to the claimant, along with an administrative act to oblige the health service provider to ensure access to persons with disabilities on the premises. The case dealt with a violation of domestic law; nevertheless, in order to interpret the domestic law, principles of the UN CRPD such as the reasonable accommodation principle were used as interpretative guidelines and rationale for domestic law requirements on physical access to premises by disabled persons.<sup>179</sup>

According to Cabinet of Ministers Regulations No. 599 On Providing Public Transport Services and the Order of their Use, a public transport vehicle must be adjusted to meet specific technical requirements, as stipulated by legislative acts, to enable persons with functional disabilities, pregnant women and persons with small children (including prams) to enter a public transport vehicle and to ensure the transportation of passengers. If the carrier has not adjusted a public transport vehicle according to these requirements, the carrier must provide an adequately equipped transport vehicle for the above persons. The transport vehicle can be ordered 72 hours prior to travel by calling the carrier. Each stop and bus terminal must have information displayed with the relevant phone number.<sup>180</sup>

In 2012, the Ombudsman's Office conducted a survey of 26 banks about access to client service halls for disabled persons in wheelchairs with a visual or hearing impairment and about the availability of special services for persons with disabilities according to their needs. Most banks have entrances to premises or client service centres, with ATMs inside banks accessible to people in wheelchairs, whereas ATMs outside banks are generally not accessible to wheelchair users. Banks reported varying practices. Rented premises which cannot be rebuilt (because of their technical, historical or architectural characteristics) were cited as the main reason why some client service centres are not accessible for people in wheelchairs.

The office also conducted a survey about the accessibility of healthcare institutions for persons with long-term physical, psychosocial, intellectual or sensory disabilities in Riga. It received written responses from 86 institutions included in the Registry of Healthcare

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<sup>179</sup> Latvia, Administrative District Court, Case No A420571712, 02.12.2013.

<sup>180</sup> Latvia, Cabinet of Ministers Regulations no 599 On Providing Public Transport Services and the Order of their Use (*Ministru kabineta noteikumi Nr. 599 "Sabiedriskā transporta pakalpojumu sniegšanas un izmantošanas kārtība"*), Section 17, 18, 28.08.2012, in Latvian at <http://likumi.lv/doc.php?id=251480>.

Institutions.<sup>181</sup> According to the survey, the premises of 79 out of 86 healthcare institutions (92 %) are accessible according to the accessibility requirements of persons with long-term physical, psychosocial, intellectual or sensory disabilities, while seven of them acknowledged accessibility problems due to specific features of their buildings. 87 % of the surveyed institutions made some improvements after the entry into force of the UN Disability Convention.

In Latvia, national law does not contain a general duty to provide accessibility by anticipation for persons with disabilities.

#### h) Accessibility of public documents

National law does not require public services to translate some or all of their documents into Braille, although the guidelines developed by the Liepāja Society of the Blind in cooperation with the Ministry of Welfare through an EU-funded project encourage the increased use of Braille.<sup>182</sup> There are no legislative acts requiring information to be published in easy-to-read language. The Easy Language Agency, an NGO, has run several projects since 2001 involving state institutions including the Central Election Commission and the *Saeima* (the Latvian Parliament). However, most initiatives are project based and few state institutions offer information in easy-to-read language.

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<sup>181</sup> Ombudsman's Office, Accessibility of healthcare institutions, summary of 2012 survey (*Tiesībsargs, Ārstniecības iestāžu pieejamība, 2012.gadā veiktās aptaujas apkopojums*).

<sup>182</sup> Latvia, Liepāja Association of Blind Persons (Liepājas Neredzīgo biedrība) (2012), 'Guidelines on Environmental Accessibility of Persons with Functional Disabilities' ('Vides pieejamības vadlīnijas personām ar funkcionāliem traucējumiem'), in Latvian at <http://redzigaismu.lv/files/VIDES%20PIEEJAMIBA%20Liepaja%20Gala%20Produkts%202012-33.pdf>.

### **3 PERSONAL AND MATERIAL SCOPE**

#### **3.1 Personal scope**

##### **3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)**

In Latvia, there are no residency or citizenship/nationality requirements for protection under the relevant national laws transposing the directives.

Since the main law transposing the directives - the Labour Law - does not refer to citizenship requirements, it can generally be said that the protection against discrimination applies to all persons regardless of their citizenship.

However, there are some laws where citizenship or status in Latvia is a precondition for the guarantee of equal rights or access to certain services, notably the Education Law, which restricts its protection to citizens and non-citizens of the Republic of Latvia as well as to different categories of persons to whom residence permits have been issued. In the case of illegal migrants, the right to education exists during the period for voluntary repatriation, as well as during detention. Access to social security is limited to Latvian citizens, non-citizens, third-country nationals and stateless persons to whom a personal ID number has been issued; persons in possession of temporary residence permits only (Article 3 of the Law on Social Services and Social Assistance) are excepted. A similar provision on the possession of a permanent residence permit as a precondition for acquiring the status of an unemployed person was invalidated by the Constitutional Court in relation to the spouses of Latvian citizens, who can only obtain a permanent residence permit after a certain number of years, when the intention of the spouses is clearly to stay permanently, which thus differs from the cases of other persons who receive a temporary residence permit.<sup>183</sup> The Law on the Ombudsman provides that a person with dual nationality cannot be appointed as ombudsman; the same prohibition applies to the President of the State.

##### **3.1.2 Natural and legal persons (Recital 16 Directive 2000/43)**

###### **a) Protection against discrimination**

In Latvia, the personal scope of anti-discrimination law covers natural persons for the purpose of protection against discrimination.

The Latvian laws dealing with discrimination do not specifically distinguish between natural and legal persons as far as protection and liability are concerned.

Article 91 of the Constitution does not distinguish between legal and natural persons when it comes to protection against discrimination. The personal scope of the Labour Law (Articles 3, 29(1), 29(9)), the Law on Education (Articles 1(12), 2, 3, 3.1)) and the Consumer Rights Protection Law cover natural persons for the purpose of protection against discrimination.

###### **b) Liability for discrimination**

In Latvia, the personal scope of anti-discrimination law covers natural or legal persons for the purpose of liability for discrimination.

The personal scope of the Labour Law covers natural or legal persons for the purpose of liability for discrimination, following Article 7.1 and 7.2, which does not divide or separate subjects and Article 4.1, which allows an employer to be a natural or legal person.

<sup>183</sup> Latvia, Constitutional Court, Case No 2001-11-0106, 25.02.2002, available at [http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/09/2001-11-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/09/2001-11-0106_Spriedums_ENG.pdf).

### **3.1.3 Private and public sector including public bodies (Article 3(1))**

#### **a) Protection against discrimination**

In Latvia, the personal scope of national legislation covers the private sector (to different degrees) and the public sector, including public bodies for the purpose of protection against discrimination.

National law covers the public sector and the private sector to different degrees, depending on the field. The Labour Law (on access to employment) applies to both the public and private sectors. The guarantees in the Law on Social Security cover social protection in the public sphere, but not services provided in the private sphere (e.g. the private medical sphere). Social advantages, for example those provided by private foundations outside the framework of an employment relationship, are not explicitly covered, although they are covered by the Consumer Rights Protection Law, to the extent that they can be considered to be a service that is publicly offered. The Law on Education applies to both the public and private spheres.

#### **b) Liability for discrimination**

In Latvia, the personal scope of anti-discrimination law covers the private sector (to different degrees) and the public sector, including public bodies for the purpose of liability for discrimination.

National law covers the public sector and the private sector to different degrees, depending on the field. The Labour Law (on access to employment) applies to both the public and private sectors. The guarantees in the Law on Social Security cover social protection in the public sphere, but not services provided in the private sphere (e.g. the private medical sphere). Social advantages, for example those provided by private foundations outside the framework of an employment relationship, are not explicitly covered, although they are covered by the Consumer Rights Protection Law, to the extent that they can be considered a service that is publicly offered. The Law on Education applies to both the public and private spheres.

## **3.2 Material scope**

### **3.2.1 Employment, self-employment and occupation**

In Latvia, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work and holding statutory office, for the five grounds. This legislation does not apply to military service.

All aspects of access to employment are governed by the Labour Law, which regulates employment relationships, including access to employment, trial periods, working conditions, pay, promotion and dismissals. The law prohibits differential treatment, providing protection against it, as required by the directives, and covering all fields mentioned therein. It applies to both the public and private sectors, including – by virtue of Article 2(4) of the State Civil Service Law<sup>184</sup> – the state civil service and specialised civil service, but excluding military service and contract work by self-employed persons, as self-employment does not qualify as an employment relationship and is based on the provisions of the Civil Law. The Law on the Prohibition of Discrimination of Natural Persons-Economic Operators applies to discrimination on the basis of race, ethnic origin, gender, disability, age, religion and sexual orientation in relation to access to self-employment and covers all types of professions which are not practised within the framework of an employment contract, e.g. legal professions, artists, consultants, etc.

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<sup>184</sup> Latvia, State Civil Service Law, 07.09.2000.

Article 2(4) of the State Civil Service Law provides that, in the state civil service, those provisions that regulate employment relationships with regard to, inter alia, the principle of equal rights, the prohibition of differential treatment and the prohibition against causing adverse consequences (prohibition of victimisation) apply.

National legislation applies to holding statutory office in line with Court of Justice of the European Union jurisprudence in the case of *D Danosa*, whereby the concept of 'worker' for the purposes of Directive 92/85 may not be interpreted differently according to each national law and must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he receives remuneration.<sup>185</sup>

### **3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))**

In Latvia, national legislation prohibits discrimination in the following areas: conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, for the five grounds, in both private and public sectors, as described in the directives.

The anti-discrimination provision in Article 29(1) of the Labour Law specifically mentions establishing an employment relationship and promotion. Article 29(9) explicitly protects against differential treatment based on the grounds of race, age, religious conviction, disability and sexual orientation. The Labour Law - and hence its guarantees - applies to both the public and private sectors, including the state civil service and specialised civil service. An equality guarantee also applies in relation to access to self-employment or contract work on the grounds of race or ethnic origin, gender, religious conviction, age, disability or sexual orientation, as provided for by Article 4(4) of the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators.

There is no explicit equality guarantee, other than the general constitutional equality clause, related to any of the grounds concerning access to employment and promotion in the military service.

### **3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))**

In Latvia, national legislation prohibits discrimination in the following areas: working conditions including pay and dismissals, for all five grounds and for both private and public employment, but excluding self-employment.

Article 29(1) of the Labour Law specifically mentions working conditions, remuneration, and giving notice of termination of an employment contract. The protection against differential treatment based on grounds of race, age, religious conviction, sexual orientation or disability is explicit, the list being left open by mention of 'other circumstances', and it also applies to civil service relationships (including for the specialised civil service). No explicit guarantee concerning working conditions, pay or dismissals - to the extent that they apply to a particular sphere - exists within the sphere of military service. The Law on the Prohibition of Discrimination of Natural Persons-Economic Operators applies to discrimination on the basis of race, ethnic origin, gender, disability,

<sup>185</sup> CJEU, *Dita Danosa v. LKB Līzings SIA*, Judgment of the Court (Second Chamber) of 11.11.2010 Case C-232/09, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62009CJ0232>.

age, religious conviction and sexual orientation, and does not cover working conditions or pay.

#### 3.2.3.1 Occupational pensions constituting part of pay

Occupational pension schemes are a new phenomenon in Latvia, and a very limited one; hence, occupational pension schemes have never been an issue and there is also no information available on their arrangements. Article 11(3) of the Law on Private Pension Funds<sup>186</sup> prohibits the employer – once it has decided to contribute to a pension plan – from discriminating on the basis of an exhaustive listing of grounds including origin, property status, racial or ethnic origin, gender or attitude towards religion (this being the traditional Latvian wording regarding religion or belief). The list does not include disability or sexual orientation, which may be a breach of the Employment Directive. Additionally, the references to working conditions and remuneration in Article 29(1) of the Labour Law could be interpreted as also covering occupational pensions, which would thus be in line with the Court of Justice of the European Union judgment in the Maruko case, and therefore also grounds not covered by the Law on Private Pension Funds.

However, it may be noted that the Law on Private Pension Funds is a *lex specialis* in relation to the Labour Law. Furthermore, the situation is somewhat complicated by the reference in the provisions to a prohibition of differential treatment in 'establishing the employment relationship, as well as *during the period of existence of employment relationship*' (emphasis added). This might be a problem, and possibly a breach of the directive, if a person attempted to challenge a discriminatory arrangement in the pension scheme after the end of the employment relationship – even if one could argue that the differential treatment was already present during the existence of the labour relationship. It remains to be seen whether the courts will interpret the relevant provisions in a way that is compatible with the requirements of the directives – as they ought to.

#### **3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))**

In Latvia, national legislation does not clearly apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

Access to vocational guidance and training in both the public and private sectors (with the exception of military service as described above) in the context of employment relationships is covered by Article 29(1) of the Labour Law with reference to 'occupational training'. Race, age, religious conviction, disability and sexual orientation are explicitly covered.

No explicit guarantee concerning access to vocational guidance, vocational training or education exists specifically within the spheres of military service, self-employment<sup>187</sup> or contract work; however, to the extent that the Law on Education<sup>188</sup> applies – and it applies also to vocational training, which is regarded as a form of education – it applies to both the public and private sectors, and also to vocational training provided by, for example, technical schools and universities. The problem, however, is that this law contains a closed list of grounds which does not include age, disability or sexual orientation, but only 'property and social status, race, ethnicity, gender, religious or political opinions, health

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<sup>186</sup> Latvia, Law on Private Pension Funds (*Likums par privātajiem pensiju fondiem*), 05.06.1997.

<sup>187</sup> There is no explicit reference to vocational guidance and training for self-employed persons under the 2012 Law on the Prohibition of Discrimination of Natural Persons-Economic Operators.

<sup>188</sup> Latvia, Law on Education, 29.10.1998, Article 3.

condition,<sup>189</sup> occupation and place of residence.’ To some extent, however, it could be argued that the protection against disability-based discrimination can be subsumed under the heading of ‘health condition’.

As far as the application of the Education Law in the public sector is concerned, a reference to Article 91 of the Constitution can resolve the deficiency of the lack of reference to particular grounds, even if this is somewhat complicated, especially since, in cases where the particular ground for discrimination is not expressly mentioned, the burden of proof which rests on the claimant is clearly even more significant, as they must also argue against the ‘inclusion of the one is the exclusion of another’ principle. There is nothing to make up for these missing grounds in the private sphere. Moreover, this means there is no implementation mechanism in this law and, naturally, no shared burden of proof. Similarly, amendments to the Law on Support to Unemployed Persons and Job Seekers covering access to vocational retraining apply to only three grounds, gender, race and ethnic origin, completely ignoring Directive 2000/78.

The conclusion, therefore, is that, in relation to vocational training outside employment relationships, differential treatment is not adequately prohibited.

### **3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))**

In Latvia, national legislation prohibits discrimination in the following areas: membership of, and involvement in, workers’ or employers’ organisations as formulated in the directives for all five grounds and for both private and public employment.

A new Law on Trade Unions was adopted on 6 March 2014, which emphasises the non-discrimination aspect: the right of anyone to establish and join a trade union without any discrimination, trade union membership and the wish to join or not to join a trade union may not serve as a basis for restricting a person’s rights (Article 4).<sup>190</sup>

Article 2(2) of the Law on Organisations of Employers and their Associations<sup>191</sup> provides that a natural or legal person who employs at least one person on the basis of a contract can become a member of an employers’ organisation, but it does not contain any non-discrimination clause.

Article 8(1) of the Labour Law reiterates the right of employees and employers to freely create and join organisations to protect their interests and specifically provides for these rights ‘without any direct or indirect discrimination related to any of the grounds referred to in Article 7(2) of this law’. Article 7(2), among others, refers to race, religious conviction, age, disability and sexual orientation, as well as to ‘other circumstances’.

As regards professional organisations, the Law on the Bar<sup>192</sup> does not contain any equality clause at all, but Latvian citizenship is a condition for access to the Bar.

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<sup>189</sup> In the autumn of 2002 there was a case in which a teacher, following the instructions of her superior, did not let an HIV-positive pupil enter a class. The case was well-publicised, raising, inter alia, the issue of the protection of sensitive data, and disciplinary action was taken against the teacher.

<sup>190</sup> Latvia, Law on Trade Unions (*Arodbiedrību likums*), 06.03.2014, <http://likumi.lv/doc.php?id=265207>.

<sup>191</sup> Latvia, Law on Organisations of Employers and their Associations (*Darba devēju organizāciju un to apvienību likums*), 29.04.1999, <http://likumi.lv/doc.php?id=24467>.

<sup>192</sup> Latvia, Law on the Bar (*Advokatūras likums*), 27.04.1993, <http://likumi.lv/doc.php?id=59283>.

### **3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)**

In Latvia, national legislation prohibits discrimination in the following areas: social protection, including social security and healthcare as formulated in the Racial Equality Directive.

In addition to constitutional guarantees of equality, Article 109 of the Constitution provides that everyone has the right to social security in old age, for work disability, for unemployment and in other cases provided for by law, while Article 111 states that the state shall protect human health and guarantee a basic level of medical care for everyone. Article 2 of the Law on Social Security<sup>193</sup> refers to 'prohibition of differential treatment' as one of the principles of the provision of social services, and Article 2.<sup>1</sup> specifies that, in the provision of social services, differential treatment based on a person's race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances is prohibited. Sexual orientation is not specified as a prohibited ground in this law, but it could be argued that it comes under 'other circumstances'. The law states: 'Social services in the meaning of this law are measures ensured by state or municipality as monetary or material support or other services to promote the full realisation of a person's social rights' (Article 13).

Article 16 of the Medical Care Law<sup>194</sup> provides that everyone has the right to receive urgent medical care as provided for by the Cabinet of Ministers, while Article 17 of that law states that the right to medical care guaranteed by the state is enjoyed by Latvian citizens, non-citizens, foreign citizens and stateless persons who are registered in the population register and have received a personal ID number, as well as by imprisoned and detained persons. There is no express guarantee of equality. However, given the definition of social services, it appears that the equality guarantee contained in the Law on Social Security applies also in the sphere covered by this law.

Thus, it can be observed that, while in some cases the explicit guarantee of equality is missing in particular laws, and in other cases it might not encompass all grounds, the guarantee contained in the Law on Social Security, which is not limited to racial or ethnic origin, but extends to other grounds in an open-ended way, covers the whole field of social protection as long as it relates to the public sphere. However, services provided by the private sector (private medical care, for example) are not covered by the wording of the Law on Social Security, nor does the constitutional guarantee apply to it.

#### **3.2.6.1 Article 3.3 exception (Directive 2000/78)**

There is no Article 3.3 exception in Latvian national legislation.

### **3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)**

In Latvia, national legislation prohibits discrimination in the following area: social advantages as formulated in the Racial Equality Directive.

In addition to the constitutional guarantee of equality, Article 3 of the Law on Social Services and Social Assistance<sup>195</sup> provides that Latvian citizens, non-citizens, foreign citizens and stateless persons who have received a personal ID number, except persons who have received temporary residence permits, but including persons with subsidiary status, have the right to social services and social security.

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<sup>193</sup> Latvia, Law on Social Security, 07.09.1995.

<sup>194</sup> Latvia, Medical Treatment Law, 12.06.1997.

<sup>195</sup> Latvia, Law on Social Services and Social Assistance, 31.10.2002.



Article 2.<sup>1</sup> of the Law on Social Security provides that social services – broadly defined as ‘measures ensured by state or municipality as monetary or material support or other services to promote the full realisation of a person’s social rights’ – shall be provided without discrimination on the basis of a person’s race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances, as long as they are provided by state or municipal institutions.

In addition, to the extent that provision of such services and security is a public function, the constitutional guarantee of equality applies. What falls outside social security and social services and is provided by private actors, perhaps with the exception of employers, seems more problematic; it could be argued that the broad equality guarantee contained in Article 29(1) of the Labour Law prohibiting differential treatment generally ‘during the period of existence of legal employment relationships’ applies also to any social advantages provided by the employer. Those social advantages provided, for example, by private foundations outside the framework of an employment relationship are not explicitly covered, although, to the extent that they can be considered a service that is publicly offered, they are covered by the Consumer Rights Protection Law in relation to race, ethnic origin, gender and disability (Article 3.<sup>1</sup>(1))

### **3.2.8 Education (Article 3(1)(g) Directive 2000/43)**

In Latvia, national legislation prohibits discrimination in the following area: education as formulated in the Racial Equality Directive.

The Law on Education applies to both the public and private spheres and contains a closed-list non-discrimination clause, which does not include all the grounds listed by the directives,<sup>196</sup> specifically: age, disability and sexual orientation. Disability, however, may be subsumed under ‘health condition’, although this would require judicial interpretation. In reality, the access of disabled children and adults to education remains a problem.

In 2016, the Parliament amended Sections 30(4) and 48(5) of the Education Law to specify that for a person to be allowed to work as the head of an educational institution or a teacher they must not violate the prohibition of discrimination.<sup>197</sup> The explanatory report of the amendments<sup>198</sup> does not provide information about the rationale for such amendments, which were drafted in conjunction with the controversial teacher ‘loyalty’ (to the Constitution and the state of Latvia),<sup>199</sup> requirements that are predominantly aimed at minority teachers working in bilingual schools.<sup>200</sup> The new amendments concerning

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<sup>196</sup> Article 3 of the Law on Education provides: ‘Every citizen of the Republic of Latvia and every person who has the right to a non-citizen passport issued by Latvia, or person to whom a permanent residence permit has been issued, as well as citizens of the European Union states to whom temporary residence permits have been issued and their children have equal rights to receive education independently from property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence.’

<sup>197</sup> Latvia, Amendments to the Education Law (*Grozījumi Izglītības likumā*), 23 November 2016, available in Latvian at <http://likumi.lv/ta/id/287247-grozijumi-izglitibas-likuma>. The amendments state that the person must not discriminate against others – this can refer not only to court decisions (criminal, civil, administrative), but also to disciplinary decisions by an administrative body that have not been appealed or annulled. There have been no such decisions against teachers made by either administrative bodies or courts.

<sup>198</sup> Cabinet of Ministers (2016), ‘Letter to the Saeima concerning Proposals to the Education Law for the 2nd Reading’, p.48, available at: <http://titania.saeima.lv/LIVS12/saeimalivs12.nsf/0/AC0F4589AC2AAFE4C225806E003CC83F?OpenDocument>.

<sup>199</sup> LETA (Latvian Information Agency) (2016), ‘Saeima endorses controversial teacher loyalty amendments to the Education Law’, 23/11/2016. Available at: <http://www.leta.lv/eng/home/important/4AF60C80-AFB1-4C4C-A8A0-B59C56A0DE0C/>.

<sup>200</sup> LSM.LV (2016), ‘Russian Teachers fear Witch Hunt Over Loyalty Law’, 20 October 2016, <http://www.lsm.lv/en/article/societ/society/russian-teachers-fear-witch-hunt-over-loyalty-law.a206305/>.

potential discrimination by educational workers replicate those in Article 3.<sup>1</sup> (7) of the Education Law.

Migrants who have a legal ground to stay in Latvia have the same right to free primary and secondary education as Latvian citizens and non-citizens. They may choose between schools that have Latvian as the language of instruction or schools that implement bilingual education programmes (Latvian and Russian or another minority language).<sup>201</sup> Minors who do not have legal status in Latvia have the right to primary education as long as they stay in Latvia.<sup>202</sup> Third country nationals have to pay for studies in higher education programmes according to the contract entered into with the respective educational institution. There is no anti-discrimination case law concerning migrants in education and there are no major policies that aim to address discrimination against migrants in education.

Municipalities can grant additional funding for schools for additional Latvian language classes for migrant pupils. In 2016/2017, there were 280 foreign pupils in Riga schools who received an extra two Latvian language lessons per week.<sup>203</sup>

#### a) Pupils with disabilities

In Latvia, the general approach to education for pupils with disabilities gives rise to problems.

Many schools and university buildings remain inadequately accessible for a person in a wheelchair, so, in many cases, physically disabled children may be offered instruction at home instead of integration in mainstream education, despite the official theoretical preference for integration. The same applies to people with intellectual disabilities in cases where specialised education and instruction at home is, de facto, the clear preference. In 2011, 13.7 % of children and young people with intellectual disabilities had never been in a school.<sup>204</sup>

According to the Ministry of Education and Science,<sup>205</sup> the number of pupils with special needs was 12 492 in the school year 2017/2018 (as compared to 12 437 in 2016/2017 and 11 846 in 2015/2016). Less than half of pupils with special needs (5 735) attend special schools, 5 264 pupils are integrated in mainstream schools (4 820 studying according to a special education programme), and 1 493 attend classes with a special education programme.

The decision about which school to attend theoretically rests with the parents, who are given recommendations from state and municipal pedagogical-medical commissions. In practice, it is difficult to fight their recommendations. Parents can appeal the municipal commission's recommendations to the state commission, but the possibilities of obtaining a different outcome are slim. Concerns have been raised about the quality of the decisions of these commissions.<sup>206</sup>

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<sup>201</sup> The only exception is asylum seekers who are minors, who according to the Asylum Law are required to gain their education in Latvian.

<sup>202</sup> Latvia, Cabinet of Ministers, Regulations No. 591 on procedures for enrolling students in and discharging from general educational institutions and special pre-school educational groups, and also for moving them up into the next grade, 6.11. 2015, available at <https://likumi.lv/ta/id/277597-kartiba-kada-izqlitojamie-tiek-uznemti-visparejas-izqlitibas-iestades-un-specialajas-pirmsskolas-izqlitibas-grupas>.

<sup>203</sup> Education, Culture and Sports Department of the Riga City Council, (2017) *Materiāls darbam ar jauniebraucēju un reemigrantu bērniem izqlitibas iestādēs*. Rīgas skolu pieredze. Available at: [http://www.amitiecode.eu/sites/default/files/uploads/training\\_booklet\\_lv.pdf](http://www.amitiecode.eu/sites/default/files/uploads/training_booklet_lv.pdf).

<sup>204</sup> Latvian Movement for Independent Living (2010), *Children and Young Persons with Intellectual Disabilities in Latvia*, p.11.

<sup>205</sup> Information provided by the Ministry of Education and Science to the LCHR by email on 24 May 2018.

<sup>206</sup> LVPORTALS.LV (2016), 'Long Awaited Changes for Special Education', 5 May, at <http://m.lvportals.lv/visi/likumi-prakse/278771-speciala-izqlitiba-jau-sen-qaida-parmainas/>.

The funding to support integration in mainstream education is the responsibility of the local authorities. Theoretically, parents can apply for such funding, but even in the more prosperous municipalities it is difficult to obtain. Nevertheless, the number of children integrated in mainstream schools has increased from 575 in 2009/2010 to 5 264 in 2017/2018.<sup>207</sup>

#### b) Trends and patterns regarding Roma pupils

In Latvia, there are no specific patterns in the education of Roma pupils such as segregation at class level. However, the rate of Roma enrolment in special education programmes is disproportionately higher than the national average.

In 2016, there were no longer specialised Roma classes in Latvia. Seven educational institutions had Roma classes in 2003-4, but these were gradually closed by 2014-15. The precise reasons for the closure of 'Roma classes' are not known, although, according to the Centre for Education Initiatives (an NGO), Roma classes have been closed allegedly due to a shortage of students – most children have emigrated with their parents, and the Roma community favours sending children to general education schools.<sup>208</sup>

According to the Ministry of Education, in 2016-17, 900 Roma children attended school.<sup>209</sup> The share of Roma with special education needs is disproportionately higher than the national share. In 2016-17, the drop-out rate of Roma children from schools was 7.5 %, <sup>210</sup> while in 2013/2014 it was 15.9 %. <sup>211</sup> In 2013-2014, 26 % of Roma children were involved in special primary education<sup>212</sup> programmes; in 2016-2017, the share has increased to 34 %. <sup>213</sup> There is no information available as to the number of Roma children of mandatory school age who are not attending school.

Data from the Population Census 2011 shows that only 9.3 % of Roma have secondary education, and only 0.8 % or 40 Roma have university education. Among 4 888 Roma over the age of 15, 31.7 % had primary education and 23.3 % had elementary education (four years of school), while 18.5 % had less than elementary-level (four years of school) education.<sup>214</sup>

There are no complete data on illiteracy in the Roma community.

### **3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)**

In Latvia, national legislation prohibits discrimination in the following area: access to and supply of goods and services as formulated in the Racial Equality Directive.

Consumer Rights Protection Law prohibits discrimination in relation to access to and supply of goods and services based on a person's gender, race or ethnic origin or disability. Although, on 19 June 2012, the Government approved amendments to the law adding age,

<sup>207</sup> Information provided by the Ministry of Education and Science to the LCHR by email on 24 May 2018.

<sup>208</sup> Latvian Centre for Human Rights (2012), FRANET National Focal Point, Social thematic study, The Situation of Roma, p.11, at <http://fra.europa.eu/sites/default/files/situation-of-roma-2012-lv.pdf>.

<sup>209</sup> Ministry of Education (2017), 'Monitoring of Educational Attainment of Roma Children in 2016/2017 from the period 2013/2014', presentation by Olita Arkle, Expert, Education Department, 12.04.2016.

<sup>210</sup> The main reasons cited are: families have emigrated and children have reached the age of 18.

<sup>211</sup> Ministry of Education and Science (2014), 'Monitoring of the Quality of Education of Roma Children Conducted by the Ministry of Education and Science in Co-operation with Regional and City Education Boards in 2013-2014' (*Izglītības un zinātnes ministrijas sadarbībā ar novadu un pilsētu izglītības pārvaldēm veiktais romu skolēnu izglītības kvalitātes monitorings 2013./2014.mācību gadā*).

<sup>212</sup> Primary education is mandatory in Latvia.

<sup>213</sup> Ministry of Education (2017), 'Monitoring of Educational Attainment of Roma Children in 2016/2017 from the period 2013/2014' provided to the Latvian Centre for Human Rights upon request.

<sup>214</sup> Letter from the Central Statistical Bureau to the Latvian Centre for Human Rights No 0708-10/222, 10.02.2012.

religious conviction and sexual orientation to the prohibited discrimination grounds, the amendments were stalled in the Parliament (Article 3.<sup>1</sup>(1)). However, as far as consumer rights protection is concerned, reference to Article 91 of the Constitution<sup>215</sup> can resolve the deficiency of the lack of reference to specific grounds.

Article 2.<sup>1</sup> of the Law on Social Security specifies that, in the provision of social services [by State and municipal services], differential treatment based on a person's race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances is prohibited. Sexual orientation is not specified as a prohibited ground in this law, but it could be argued that it comes under 'other circumstances'.

The Law on the Prohibition of Discrimination of Natural Persons-Economic Operators prohibits discrimination in the public and private spheres in relation to the supply of goods and services necessary for the performance of self-employed activities on the basis of a person's gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin (Article 2.<sup>1</sup>(1)).

On 4 June 2015 the *Saeima* (Parliament) amended the Latvian Administrative Violations Code (*Grozījumi Latvijas Administratīvo pārkāpumu kodeksā*).<sup>216</sup> Article 155.<sup>14</sup> (Failure to Observe the Rights of Air Transport Passengers) was supplemented with a provision whereby, in the event of any violation of the right of persons with disabilities or persons with reduced mobility to use air transportation services, a warning shall be issued or a fine of EUR 450 to EUR 3 000 shall be imposed on the legal persons concerned.

#### 3.2.9.1 Distinction between goods and services available publicly or privately

In Latvia, national law does not distinguish between goods and services available to the public (e.g. in shops, restaurants and banks) and those only available privately (e.g. those limited to members of a private association).

The law does not distinguish between the goods and services available to the public and those available privately, thus it should apply to both categories. There is as yet no case law in this regard.

#### **3.2.10 Housing (Article 3(1)(h) Directive 2000/43)**

In Latvia, national legislation prohibits discrimination in the following area: housing as formulated in the Racial Equality Directive.

The Law on Housing does not contain a non-discrimination clause, but this sphere is covered by the Consumer Rights Protection Law, which prohibits discrimination in access to and the supply of goods and services, but only in relation to the grounds of race, ethnic origin, gender and disability (Article 3.<sup>1</sup>).

In addition to that, it can be argued that the amended Law on Social Security (Article 2.<sup>1</sup>, see under 3.2.6.), which contains a more extensive and open-ended list of grounds (i.e. race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances) for social services that are provided by state or municipal institutions and that are intended to promote the enjoyment of social rights, also covers access to housing, even if it does not refer to it expressly. Access to private housing is thus covered only to the extent that it comes under the Consumer Rights Protection Law. This law does not specifically promote or require housing that is accessible to people with disabilities and to older people.

<sup>215</sup> Latvia (1996), *Latvijas Republikas satversme*. [Rīga, Latvia]: Latvijas Vēstnesis.

<sup>216</sup> Latvia, Amendments to the Administrative Violations Code (*Grozījumi Administratīvo pārkāpumu kodeksā*), 04.06.2015, <http://likumi.lv/ta/id/274748-grozijumi-latvijas-administrativo-parkapumu-kodeksa>.

There are no new legislative developments, policies or case law concerning discrimination against migrants in housing. Foreigners with temporary residence permits are not eligible for the State-guaranteed social assistance and services, including a social apartment or a social shelter. In 2017, the Ombudsman's Office received a complaint about an advertisement that indicated that double rent would be required from Indian and Pakistani students for renting a room. The Ombudsman turned to the administrator of the advertising site and the advert was removed.<sup>217</sup>

#### 3.2.10.1 Trends and patterns regarding housing segregation for Roma

In Latvia, there are patterns of Roma having their access to better housing restricted.

According to a comprehensive Roma survey in 2015, fewer Roma (42.5 %) own a dwelling than the national average (58.8 %); rental is used by 18.6 % of Roma (national average 12.6 %); and 35.6 % of Roma reside in municipal or state housing. A range of factors restrict Roma access to better housing, including low and irregular income, as well as an absence of savings – only 9.4 % have savings exceeding EUR 250. Prejudice against Roma as tenants and neighbours and various other factors also play a role. Roma housing is unsatisfactory and worse than that of other residents of Latvia. The majority of Roma live in households that lack one of the basic amenities (e.g. plumbing, a flushing toilet, a shower or a bathroom) and the state of the dwellings is poor, sanitation being the key problem. In 55.9 % of the housing where Roma live, there is no shower or bathroom, 42.1 % of the housing does not have flushing toilets, and a quarter of the Roma surveyed (26 %) do not have access to any water supply at home. At the same time, Roma actively use the support offered by municipalities and NGOs, predominantly municipal housing benefit.<sup>218</sup>

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<sup>217</sup> Ombudsman (*LR Tiesībsargs*) (2018) *Ombudsman's 2017 Annual Report*, p. 275, in Latvian at [http://www.tiesibsargs.lv/uploads/content/lapas/tiesibsarga\\_2017\\_gada\\_zinojums\\_1520515340.pdf](http://www.tiesibsargs.lv/uploads/content/lapas/tiesibsarga_2017_gada_zinojums_1520515340.pdf).

<sup>218</sup> Latvijas Fakti Market and Social Research Centre (2015), *Romi Latvijā* (Roma in Latvia), pp.95-122. The research was conducted as part of the file [http://ec.europa.eu/justice/newsroom/files/summaries\\_selected\\_2013\\_ag\\_prog\\_ad\\_en.pdf](http://ec.europa.eu/justice/newsroom/files/summaries_selected_2013_ag_prog_ad_en.pdf). "Different people. Diverse experience. One Latvia II" project Nr. JUST/2013/PROG/AG/4978/AD.

## **4 EXCEPTIONS**

### **4.1 Genuine and determining occupational requirements (Article 4)**

In Latvia, national legislation provides for an exception for genuine and determining occupational requirements.

The only statute that refers to occupational requirements is the Labour Law. Article 29(2) provides that 'differential treatment based on the gender of employees is permitted only in cases where a particular gender is an objective and substantiated precondition for performance of the relevant work or for the relevant employment'. Article 29(9) applies this also to differential treatment based on a person's race, colour, age, disability, religious, political or other opinions, national or social origin, property or family status, sexual orientation and other circumstances. There is no further explanation of such preconditions. In the only case – the case of *Kozlovska v. SIA Palso*<sup>219</sup> – where the court does refer to an 'objective precondition', there is no real discussion of it, since the employer claimed that he had indicated that the person's 'accent' determined the refusal to employ at the request of the claimant, and that the real reasons behind this had been a lack of required secondary education and an appearance that was unsuitable for the available position. Thus, the employer did not actually argue that the absence of a certain accent was an objective and substantiated precondition. The court concluded that there was no dispute as to the claimant's knowledge of the Latvian language – which would have been an objective precondition – and that the respondent had not shown that the absence of an accent was such a precondition.

The current solution, permitting individual tailoring depending on the tasks of the particular position, is preferable. However, the way in which the courts will interpret 'objective and substantiated requirements' in cases of dispute is critical.

### **4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)**

In Latvia, national legislation provides for an exception for employers with an ethos based on religion or belief.

The Labour Law includes a provision stating that 'in a religious organisation differential treatment based on a person's religious belief is admissible where, taking into account the ethos of the organisation, a particular religious belief is an objective and substantiated precondition for the work or activity in question' (Article 29(10)). According to the wording of the law, this only applies to a religious organisation, thus excluding other beliefs, and the measures seem to create a broader exception than the one provided for in Article 4(2) of Directive 2000/78, yet it remains to be seen how this will be interpreted by the courts. This provision is a counterpart of Article 14(1) of the Law on Religious Organisations, which provides that religious organisations elect or appoint their religious personnel in accordance with their regulations,<sup>220</sup> while other employees are employed and dismissed in accordance with the law regulating employment. In other aspects of employment, the Labour Law applies.

### **4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)**

In Latvia, national legislation does not explicitly provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78). However, it does maintain age and capability requirements.

<sup>219</sup> Latvia, Jelgava court, Case No.15066406, 25.05.2006.

<sup>220</sup> The Law on Religious Organisations does not contain any other provision whereby this exception cannot lead to discrimination on a ground other than religion/belief.



Article 12(2) of the Military Service Law,<sup>221</sup> which concerns the right of the military to work, states that legislative provisions governing legal labour relations are not applicable in the case of the military, except for those measures that prohibit differential treatment and rights being accorded to pregnant women, women breast-feeding a child and women during a post-natal period of up to one year, in so far as they do not contravene the law. Persons who do not comply with health requirements cannot be recruited and employed in the military service. (Article 16(2)5).

The Military Service Law<sup>222</sup> provides for age limits of 27, 35 or 40 years, depending on seniority, for admission to military education establishments. The maximum age limits for professional military service range from 36 to 60 years, depending on seniority in active service, and from 55 to 65 in the case of reserves (limited extensions are possible), whereas a person can be admitted to professional military service if they are able to serve at least five years before reaching the prescribed age limit.

None of the laws regulating employment in the police, prisons or the emergency services contains an equality guarantee, and hence this provides for no exceptions.

On the State Civil Service Law, the equality guarantees contained in the Labour Law apply also to the civil service and specialised civil service. Access to all of these occupations is restricted to Latvian citizens. Article 28 of the Law on Fire Safety and Fire-fighting<sup>223</sup> provides that only persons aged 18-40 are accepted into the state fire safety and fire-fighting service. A person may perform their service until the age of 50, although this can be extended until the age of 60 if the person so wishes, and following an evaluation of their physical and professional abilities. The law also requires that the applicant's physical condition and state of health meet the requirements of the service. The Law on the Police sets 50 years as the maximum age for service in the police and allows unlimited extensions for the higher echelons, as well as limiting the age range for entering police service to between 18 and 35. The physical and health requirements allowing persons to fulfil police duties are also contained in the law.

#### **4.4 Nationality discrimination (Article 3(2))**

##### **a) Discrimination on the ground of nationality**

In Latvia, national law does not include exceptions relating to difference of treatment based on nationality.

There are no provisions in national laws that would rely specifically on the exception contained in Article 3(2) of the directives yet, in a number of cases, nationality – usually in relation to the person's status in Latvia and the requirement that persons be issued an ID number, which sometimes excludes persons in possession only of a temporary residence permit – is a condition for access to certain professions or benefits. Thus, all employment in the civil service and specialised civil service, as well as in military service, is restricted to Latvian citizens. Furthermore, the Law on the Bar restricts access to practice in the legal profession to Latvian citizens and – since 2004 – to EU nationals who have been admitted to the bar in other EU member states. In some cases, however, a difference of treatment exists which may be hard to justify. Thus, Article 1 of the transition provisions of the Law on State Pensions provides for different calculations of pensions for Latvian citizens and Latvian non-citizens, as well as for foreigners and stateless persons who worked outside Latvia before 1991: for citizens, the years worked are taken into account when calculating their pensions, but this is not the case for persons in other categories. This issue is particularly important for Latvian non-citizens, yet, unfortunately, when this provision was

<sup>221</sup> Latvia, Military Service Law (*Militārā dienesta likums*), 30.05.2002, available in Latvian at <http://likumi.lv/doc.php?id=155885>.

<sup>222</sup> Latvia, Military Service Law, 30.05.2002.

<sup>223</sup> Latvia, Fire Safety and Fire-fighting Law (*Ugunsdrošības un ugunsdzēsības likums*) 24.10.2002.

challenged in the Constitutional Court,<sup>224</sup> the court, based on the fact that non-citizens were not mentioned in this provision, which only expressly deals with citizens, foreigners and stateless persons, considered it as a legislative omission that it could not decide upon. The issue was later addressed through the ECtHR case *Andrejeva v. Latvia*, which concluded that the differential treatment of a specific non-citizen compared with citizens was discrimination by nationality.<sup>225</sup> On 17 February 2011, the Constitutional Court of the Republic of Latvia adopted a judgment dismissing the claim of five non-citizens regarding their complaint about the allegedly discriminatory old-age state pension system of Latvia.<sup>226</sup> The case concerned a provision in the amended Law on State Pensions, dating from 2008, concerning the working period and length of obligatory military service accrued outside the territory of Latvia before 31 December 1990 not having been included into the length of insurance, which has had a considerable effect on the amount of people's pensions.

The court pointed out, first, that the state enjoys a wide margin of discretion when establishing its social security system, including the pension system. It concluded that the context of state continuity is the determining factor and serves as a crucial aspect when dealing with differences in the procedure for calculating the pensions of citizens and non-citizens. Finally, the court drew attention to the fact that, when solving the problem of cross-border pensions, bilateral international agreements regarding cooperation must be used. The court thus regarded the differential treatment as proportional and in compliance with Article 14 of the European Convention on Human Rights in conjunction with Article 1 of Protocol No. 1, as well as with Article 91 of the Latvian Constitution.

In Latvia, nationality (as citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law. It may be subsumed under 'other circumstances' in various laws that leave an open-ended list of prohibited discrimination grounds, but this would require judicial interpretation.

b) Relationship between nationality and 'race or ethnic origin'

Given the ethnic composition of Latvia, there may be cases of overlapping nationality and ethnic discrimination.

In 2008, the Ombudsman addressed Ryanair concerning the impossibility, at that point, for persons who were not EU/EEA citizens to register for flights online, thus entailing an additional fee for registering at the airport. The Ombudsman considered it to be indirect ethnic discrimination, as the requirement affected Latvia's non-citizens, who formed a significant part of the population and were predominantly representatives of ethnic minorities. The Ombudsman referred to EU directive 2000/43 and to the Consumer Rights Protection Law, which prohibit indirect discrimination on the ground of ethnicity in access to goods and services. Later, the Ombudsman's Office announced it had terminated the investigation, because Ryanair admitted that its services violated the principle of equal treatment and informed the office about undertaking measures to ensure non-discrimination in the immediate future.<sup>227</sup>

The use of the terms 'nationality', 'ethnic origin' and 'national origin' is not always consistent. In court practice, 'ethnic' and 'national origin' have been used as synonyms in

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<sup>224</sup> Latvia, Constitutional Court, Case No. 2001-02-0106, 26.06.2001, available at [http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/02/2001-02-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/02/2001-02-0106_Spriedums_ENG.pdf).

<sup>225</sup> European Court of Human Rights, *Andrejeva v. Latvia*, Application No 55707/00, 18.02.2009, at <http://hudoc.echr.coe.int/eng?i=001-91388>.

<sup>226</sup> Latvia, Constitutional Court of the Republic of Latvia, Case No. 2010-20-0106, 17.02.2011, available at [http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/03/2010-20-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/03/2010-20-0106_Spriedums_ENG.pdf).

<sup>227</sup> The opinion of the Ombudsman is available at [http://www.tiesibsargi.lv/img/content/atzinums\\_par\\_aviokompanijas\\_ryanair\\_pakalpojumu\\_sniegšanas\\_no\\_teikumu\\_atbistibu\\_diskriminacijas\\_aizlieguma\\_principam.pdf](http://www.tiesibsargi.lv/img/content/atzinums_par_aviokompanijas_ryanair_pakalpojumu_sniegšanas_no_teikumu_atbistibu_diskriminacijas_aizlieguma_principam.pdf) (in Latvian).



criminal cases, with 'national origin' being understood as referring to nationality.<sup>228</sup> Given the widespread Soviet practice of using 'nationality' ('*natsionalnost*' in Russian) in identity documents,<sup>229</sup> the term may also sometimes be equated with 'ethnic origin.'

#### **4.5 Work-related family benefits (Recital 22 Directive 2000/78)**

##### **a) Benefits for married employees**

In Latvia, it would probably constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married, but judicial interpretation may be required.

Latvian law provides for no family-related benefits, hence there is neither exclusion nor inclusion of non-married couples. On the other hand, the broad equality guarantee contained in Article 29(1) of the Labour Law, prohibiting differential treatment generally 'during the period of existence of legal employment relationships', would presumably also apply to work-related family benefits provided by the employer.

Furthermore, Article 29 of the Labour Law provides for family status (*ģimenes stāvoklis*) as one of the prohibited grounds for differential treatment, which presumably might prohibit the provision of any benefits to married couples only as opposed to unmarried couples.

##### **b) Benefits for employees with opposite-sex partners**

In Latvia, it would probably constitute unlawful discrimination in national law if an employer provided benefits only to those employees with opposite-sex partners.

Unjustified differential treatment on the ground of sexual orientation is prohibited in Latvia within legal employment relationships, independently of whether or not the same-sex partnership is officially recognised.

#### **4.6 Health and safety (Article 7(2) Directive 2000/78)**

In Latvia, there are no exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78). There is no case law in this regard.

#### **4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)**

##### **4.7.1 Direct discrimination**

In Latvia, national law probably provides a limited exception for direct discrimination on age.

##### **a) Justification of direct discrimination on the ground of age**

In Latvia, it is probably possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age.

There is no special test in Latvian legislation for the justification of age-based discrimination; the general 'objective and substantiated precondition' test contained in

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<sup>228</sup> Latvia, Supreme Court (2012), *Court Practice in Criminal Cases Concerning Incitement to Ethnic and National Hatred*, in Latvian at <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/>.

<sup>229</sup> A fifth line in Soviet passports was '*natsionalnost*'. See: Simonsen, Sven Gunnar (2005), 'Between Minority Rights and Civil Liberties: Russia's Discourse Over 'Nationality' Registration and the Internal Passport', *Nationalities Papers*, 33(2), pp. 211–229, at <https://www.prio.org/Publications/Publication/?x=3202>.

Article 29(2) of the Labour Law applies also to age-based differential treatment in employment relationships covered by this law. Article 37 of the Labour Law sets out restrictions on work by minors, while Article 32(3) prohibits the indication of age limitations in a job advertisement, except in cases where, in accordance with the law, persons of a certain age may not perform the particular job. However, there is no relevant case law yet, and thus there has been no interpretation of the 'objective and substantiated precondition' test by the courts.

b) Permitted differences of treatment based on age

In Latvia, national law does permit some differences of treatment based on age for activities within the material scope of Directive 2000/78.

Age-based restrictions apply to access to certain professions including the military or police service (age restricted to between 18-35 years; see under 4.7.3 below), to membership of the judiciary (30 years), and to membership of the bar (25 years). On retirement ages and Constitutional Court cases where age limits were challenged, see under 4.7.4 below.

Similarly, age restrictions apply to certain training programmes, for example military and police training programmes. However, generally, there is no evidence of discrimination in access to training.

c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

In Latvia, national law does not allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2).

Article 11.(3) of the Law on Private Pension Funds prohibits employers – once they have decided to contribute to a pension plan – from discriminating on the basis of origin, property status, racial or ethnic origin, gender or attitude towards religion. Age is not listed among these criteria, nor are disability and sexual orientation; however, during the employment relationship, this deficiency might be remedied by reference to Article 29 of the Labour Law (see under 3.2.3 b). The beneficiary can accede to the benefits of the pension plan after reaching the age provided for by the plan; however, that age cannot be under 55 years, with the exception of certain professions as decided by the Cabinet of Ministers.

#### **4.7.2 Special conditions for young people, older workers and persons with caring responsibilities**

In Latvia, there are certain special conditions set by law for older workers in order to promote their vocational integration, and for persons with caring responsibilities to ensure their protection.

There are no special conditions for the integration of such persons or their protection, with the exception provided in Article 108 of the Labour Law: in cases of redundancies, one of the groups of persons who are prioritised to remain employed includes those raising a child up to the age of 14 or a disabled child up to the age of 16, or those with at least two dependant persons. Another such group is persons for whom less than five years remain until reaching the age of retirement.

#### **4.7.3 Minimum and maximum age requirements**

In Latvia, there are no exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training.

However, there are some age limits in place. In certain training programmes, for example military or police training programmes, age restrictions apply. The Military Service Law<sup>230</sup> provides for age limits of 27, 35 or 40 years, depending on seniority, for admission to military education establishments; the maximum age limits for professional military service range from 36 to 60 years, depending on seniority, in active service, and from 55 to 65 in the case of reserves (limited extensions are possible), whereas a person can be admitted to professional military service if they are able to serve at least five years before reaching the prescribed age limit. There are no other maximum age limits outside the military forces and the Law on the Police (under Article 8.2 citizens can be assistants of police officers until they reach the age of 65).

Article 7 of the Law on career service levels of officials of the Ministry of Interior and prison administration provides for access to employment by certain services (police service, prison staff, border guards, etc.) from 18 to 40 years, however, persons over 40 may also be hired provided they have a 10-year service in the military, prison service or Ministry of Interior.<sup>231</sup>

The State Civil Service Law does not provide for a minimum age, although it contains an equivalent higher education requirement. The maximum age for the civil service is the retirement age (see below – section 4.7.4. 'Retirement'). The Law on the Judiciary sets a minimum age of 30 years, while the law regulating advocates sets a minimum age of 25 years for access to this profession. The Law on the Public Prosecutor's Office sets the minimum age at 25.

Generally, however, there is no indication of age limitations in access to training, and there has been no discussion as to whether these age limits comply with the requirements of the directive.

#### **4.7.4 Retirement**

##### **a) State pension age**

In Latvia, there is no state pension age at which individuals must begin to collect their state pensions.

In Latvia, an individual can collect a pension and still work.

According to Article 11 of the Law on State Pensions,<sup>232</sup> the right to a state pension applies when a person has reached 62 years of age. From 1 January 2014, the pension age is gradually being raised to 65, to be completed by 2025. In certain professions, for example in the military or in certain services of the Ministry of the Interior, depending on the term of service, the right to a pension begins earlier. However, it is not mandatory for a worker who has reached the state pension age to receive the pension. Indeed, the person can both work and receive the full amount of the state pension,<sup>233</sup> so there is no reason not to collect the pension.

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<sup>230</sup> Latvia, Military Service Law, 30.05.2002.

<sup>231</sup> Latvia, Law on career service levels of officials of the Ministry of Interior and prison administration (Iekšlietu ministrijas sistēmas iestāžu un ieslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm dienesta gaitas likums), 15.06.2006.

<sup>232</sup> Latvia, Law on State Pensions (*Par valsts pensijām*), 02.11.1995.

<sup>233</sup> Prior to the judgment of the Constitutional Court invalidating the relevant norm the person who continued to work could only receive part (around EUR 100 at that time) of her pension. A second similar case No. 2009-43-01 was decided by the Constitutional Court on 21.12.2009, invalidating - albeit not on the basis of the anti-discrimination article of the constitution - the provision of the 'crisis law' providing that persons who continued to work could only receive 30 % of the amount of the state pension; the judgment is available electronically at [http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/07/2009-43-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/07/2009-43-01_Spriedums_ENG.pdf).

## b) Occupational pension schemes

In Latvia, there is no normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

Occupational pension schemes are a new and still rather limited phenomenon in Latvia, hence occupational pension schemes have never been an issue and there is no information available on the arrangements governing them. Article 11(5) of the Law on Private Pension Funds provides that the beneficiary can accede to the benefits of the pension plan after reaching the age provided for by the plan; however, that age cannot be under 55 years, with the exception of certain professions as decided by the Cabinet of Ministers. After reaching the required age, the person has to choose whether to receive the pension or to continue membership in the plan. According to the formulation of the law, these two possibilities seem to be mutually exclusive.

In Latvia, if an individual wishes to work longer, payments from such occupational pension schemes can be deferred.

In Latvia, in case of an occupational pension scheme an individual most likely cannot collect a pension and still work.

## c) State imposed mandatory retirement ages

In Latvia, there are some state-imposed mandatory retirement age(s), mainly in the civil service.

While there are generally no mandatory retirement ages requiring a person to retire upon reaching the pension age, access to certain positions, for example in the civil service, is conditional upon the person not having reached the pension age; upon reaching the pension age the person must retire from the civil service unless their superior decides otherwise (Article 41(1)(f) of the State Civil Service Law).

These provisions of the State Civil Service Law were challenged in the Constitutional Court. The court held, however, that they did not violate the prohibition of differential treatment.<sup>234</sup> Since this seems to be established practice in other member states, no significant further debate on the compatibility of this arrangement with the directives has followed. In a case in 2014, where a civil servant was dismissed upon reaching the civil service retirement age, the Supreme Court Senate again reiterated the conclusions of a 2003 Constitutional Court decision, which established that the relevant article of the law has a legitimate aim – to facilitate access to the civil service by young people (such a legitimate aim being supported by Court of Justice of the European Union jurisprudence). The court also referred to Recital 25 of the preamble to Directive 2000/78/EC and to Article 6 of the directive, establishing a distinction between differences in treatment and prohibited discrimination on grounds of age.<sup>235</sup>

The age limit of 65 for occupying the post of university professor or associated professor, as well as the highest administrative positions in universities and scientific institutions, was invalidated as discriminatory by the Constitutional Court's decision<sup>236</sup> of 20 May 2003 although, even in this case, the prohibition upon occupying the posts concerned was not absolute: the Law on Higher Educational Establishments provided for the possibility of continuing to work on the basis of an individual contract, to be concluded at the discretion

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<sup>234</sup> Latvia, Constitutional Court. Case No. 2003-12-01, 18.12.2003, available electronically at [http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2003-12-01\\_Spriedums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2003-12-01_Spriedums.pdf).

<sup>235</sup> Supreme Court of Latvia Administrative Case Department, *B. v. State Revenue Service (B. pret Valsts ieņēmumu dienestu)*, Case No A420322813, 27.08.2014.

<sup>236</sup> Constitutional Court. Case No 2002-21-01, 20.05.2003, available at: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-21-01\\_Spriedums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-21-01_Spriedums.pdf).

of the university rector, or to receive the status of professor emeritus. Following the Constitutional Court decision, the age limit thus does not apply any more.

A similar provision establishing a retirement age of 50, which can be extended to 60, is contained in Article 35 of the Law on Fire Safety and Fire-fighting.

d) Retirement ages imposed by employers

In Latvia, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

The setting of retirement ages by an employer has never been an issue either. Since there is generally no state-imposed retirement age, it seems safe to argue that the guarantee contained in Article 6 of the Labour Law stating that 'provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment contract and orders of an employer which, contrary to regulatory enactments [that is, laws or secondary legislation], erode the legal status of an employee, are void and can be declared as such by courts of general jurisdiction' would apply to any retirement age or age when the termination of the employment contract becomes possible, as set out by contract or collective bargaining or unilaterally by the employer.

e) Employment rights applicable to all workers irrespective of age

The Labour Law does not provide for the right of the employer to give notice to the person who has reached retirement age. Hence, the protection against age-based differential treatment and against dismissal is not limited to pre-retirement age, but continues after its attainment and indeed applies independently of age, although in practice there is a widespread feeling that those persons who have reached retirement age would be the first targets for dismissal based on considerations of social justice.

f) Compliance of national law with CJEU case law

In Latvia, national legislation is in line with the CJEU case law on age regarding compulsory retirement.

As there is no state-imposed retirement age, national legislation would seem to be compliant with the CJEU case law. Although some laws fix maximum age limits for certain professions, e.g. prosecutors and judges, this would require the domestic courts to decide whether such provisions are justified or not.

#### **4.7.5 Redundancy**

a) Age and seniority taken into account for redundancy selection

In Latvia, national law does not permit age or seniority to be taken into account in selecting workers for redundancy.

The Labour Law does not provide for an order of preference for selecting persons for redundancy, including in relation to age or seniority. Article 108 of this law only sets the criteria for priority for staying in employment in cases of selection for redundancy, thus tipping the balance in their favour. These criteria, in cases where performance, results and qualifications do not substantially differ, include seniority (employees who have worked for the relevant employer for a longer time, such that seniority is an asset) and employees for whom less than five years remain until reaching the age of retirement. All in all, there are 10 such grounds for priority, and none of them has automatic priority over the others.

b) Age taken into account for redundancy compensation

In Latvia, national legislation provides compensation for redundancy. This is not affected by the age of the worker.

Compensation for redundancy ranges from one to four months' salary, depending on the person's length of employment by the particular employer, so, in the context of compensation, seniority matters but age does not – although, admittedly, the two can be related.

**4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)**

In Latvia, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

**4.9 Any other exceptions**

In Latvia, no other exceptions to the prohibition of discrimination (on any ground) are provided for in national law.

As there is no comprehensive prohibition of discrimination in national law, there are no other exceptions.

## **5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)**

### **a) Scope for positive action measures**

In Latvia, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is neither permitted nor prohibited in national law.

Positive action has so far been largely foreign to the Latvian legal system, and there are no specific measures aimed at ensuring or promoting full equality or to compensate for disadvantages linked with religion or belief or sexual orientation.

### **b) Main positive action measures in place on national level**

There is no indication that the Government might be considering adopting such measures; in fact, in the absence of any reference in national legislation to the possibility of positive action, it is also highly doubtful that such measures, if adopted by a particular employer, would be considered legal.

However, the State Employment Service runs a project on active employment measures for certain groups of unemployed persons. Among the eligible categories are persons aged over 55 years and persons belonging to ethnic minorities, who need to consolidate their knowledge of the state language, professional knowledge or professional experience in order to increase their chances of obtaining a permanent job. Within the framework of the project, 50 % (up to the official minimum salary) of the salary of the person is paid by the state for up to 12 months. Similarly, there is a traineeship project for unemployed young people aged 18-29, with a monthly wage contributed for up to six months and a monthly subsidy of 50 % of the official minimum salary paid to the supervisor of two unemployed youths.

There is also a project run by the State Employment Service aimed at the creation of subsidised work placements specifically for persons with disabilities.

According to Cabinet of Ministers regulations No.75, employers hiring unemployed persons with disabilities<sup>237</sup> can be reimbursed:

- by up to EUR 711;
- through a contribution (at least of the amount of the official minimum salary) to the salary of a disabled person for up to 12 months;
- to cover the services of a sign language interpreter (EUR 10.50 per hour, proportionate to the hours worked by the person with disability, but for no more than 40 hours per week);
- through occupational therapists or other specialists being provided for the employment of the disabled person;
- through a monthly subsidy of 50 % of the official minimum salary, paid to the supervisor of the disabled employee, thus helping to alleviate the burden on the employer.<sup>238</sup>

There are no quotas for access by disabled persons to the labour market, and no relevant case law.

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<sup>237</sup> These subsidies only apply if the individual has been officially recognised as disabled under the Disability Law.

<sup>238</sup> Latvia, Cabinet of Ministers Regulations No. 75 on the procedure for the organisation and financing of active employment measures and preventive activities reducing unemployment and the selection principles of implementers of measures (*Ministru kabineta noteikumi Nr.75 Noteikumi par aktīvo nodarbinātības pasākumu un preventīvo bezdarba samazināšanas pasākumu organizēšanas un finansēšanas kārtību un pasākumu īstenotāju izvēles principiem*), 25.01.2011, available in Latvian at <http://likumi.lv/ta/id/225425>.

The Government report 'Information on Roma integration policy measures in Latvia' (hereafter – 'the report'), produced by the Ministry of Culture in 2011, describes a series of national Roma integration tasks and measures, which have been included in the policy planning document 'National Identity, Civil Society and Integration Policy Guidelines 2012-2018', as approved by the Cabinet of Ministers on 20 October 2011. The report describes the current situation of Roma in Latvia and identifies challenges to the socio-economic integration of Roma in education, employment, housing and healthcare, as well as their general enjoyment of human rights, civic participation and tolerance. Some of the measures could be considered as 'positive action' measures. However, the report does not use the notion of 'positive action' and uses the wording of 'targeted approach' instead, applying it to a broader range of activities.

In accordance with the EU framework on national Roma integration strategies, Latvia has developed a set of national Roma integration policy measures for 2012 to 2018, which have been included in the above guidelines.

The latest report on implementation covers 2015 and provides statistical information on the Roma situation in education, employment and social inclusion, as well as support granted to Roma NGOs. It provides information on Roma related activities conducted by different municipalities, including examples of good practice. Information on different activities and supported projects is also provided by various ministries, such as the Ministries of Education, Welfare and Culture, within their respective areas of competence. The report largely draws on the findings of a comprehensive Roma survey conducted in 2015.<sup>239</sup>

There are no quotas or narrowly tailored preferential treatment in Latvia.

There are no major positive action measures related to migrants to promote their integration in employment, with the exception of Latvian language training for asylum seekers.<sup>240</sup>

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<sup>239</sup> Ministry of Culture (*Kultūras ministrija*) (2016) *Informatīvais ziņojums par Latvijas romu integrācijas pasākumu īstenošanu 2015.gadā*, available in Latvian at [https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas\\_integracija/Romi/Dokumenti/Info-zinojums2015\\_010316.pdf](https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas_integracija/Romi/Dokumenti/Info-zinojums2015_010316.pdf).

<sup>240</sup> According to a survey of third-country nationals, mainly with temporary residence permits, a lack of Latvian language proficiency (70 %) and high Latvian language requirements (24 %) were mentioned as some of the key barriers to finding a job. In: BISS (2015), *Trešo valstu pilsoņu portrets Latvijā*, p.38 [http://www.sif.gov.lv/images/files/SIF/tres-valst-pils-port/Gramata\\_pilsonu\\_290615\\_web.pdf](http://www.sif.gov.lv/images/files/SIF/tres-valst-pils-port/Gramata_pilsonu_290615_web.pdf).



## 6 REMEDIES AND ENFORCEMENT

### 6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

#### a) Available procedures for enforcing the principle of equal treatment

In Latvia, the procedures that exist for enforcing the principle of equal treatment include judicial and administrative measures, as well as forms of alternative dispute resolution such as mediation (conciliation).

A number of remedies are available to persons who consider themselves wronged by differential treatment; however, none of them is specifically aimed at ensuring equal treatment. All procedures are binding, except for those of the Ombudsman, who can issue non-binding recommendations. The institutions to which such persons can turn are:

- In cases of discriminatory practices by public institutions - the same public institution that has treated the person differently, or a higher institution, administrative court or public prosecutor's office

Article 76(2) of the Administrative Procedure Law allows an administrative act or factual action to be challenged – including discriminatory acts and behaviour in civil service relationships in the public sector – before a higher institution, and then, if no such higher institution exists or if it fails to notify the applicant of the outcome of their submission directly, before the administrative court.

The Administrative Procedure Law sets out the principle of objective investigation by the court and the possibility to opt for a written procedure if both parties agree. All three instances of administrative courts are located in Riga, however first-instance administrative courts also operate in four other regions.

According to Article 38 of this law, any person, not only a lawyer, may be a representative in an administrative procedure. Article 16 of the Law on the Public Prosecutor's Office provides for the prosecutor's involvement in the protection of the rights and lawful interests of disabled persons, minors and other persons who have limited possibilities to protect their own rights. The result of the prosecutor's involvement is not limited to a warning to the culprit or to the opening of a criminal case, but it may also lead to initiating a civil case.

- Courts of general jurisdiction

The provisions of Article 92 of the Constitution, which state that 'Everyone has the right to defend their rights and lawful interests in an impartial court', have been further elaborated by the Judicial Powers Law. Article 5 provides that, in civil cases, the court shall hear cases related to the protection of civil rights, labour rights, family rights, and other rights and lawful interests of individuals and legal entities. The procedure for adjudicating non-administrative cases, which includes cases arising from labour relationships in the private sector and in the public sector outside the civil service, is determined by the Civil Procedure Law.

The payment of court expenses, as well as of the state levy, is waived in cases based on an employment relationship and in cases that have been initiated by the prosecutor (Article 43(1), paragraphs 1 and 5 of the Civil Procedure Law, Article 218 of the Labour Law). This does not include lawyers' fees, however, as, since the adoption of the law on legal aid provided for by the state<sup>241</sup> in 2005, a mechanism exists whereby persons in need can be granted free legal assistance in criminal and civil cases. Cabinet of Ministers Regulations

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<sup>241</sup> Latvia, State-insured Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*), 17.03.2005.

No 558 set out conditions for receiving legal aid, according to which the person's particular situation, property status and income level do not suffice for partial or full protection of their rights. Free legal aid is to be provided to persons whose status is defined as low-income or indigent, and a person who seeks such aid is required to submit documents attesting to their income level, property status and special situation.

The Ombudsman's Office may, upon termination of an investigation procedure and upon establishment of a violation, decide to defend the rights and interests of a private individual in an administrative court, if necessary for the public interest, as well as bringing a civil claim in cases of a violation of the prohibition of differential treatment.

- State Labour Inspectorate

The State Labour Inspectorate was established by the Law reinstating the legal force of the statute of 28 April 1939 On Labour Inspection,<sup>242</sup> and its work is regulated by the State Labour Inspectorate Law.<sup>243</sup> Among its functions is the monitoring of compliance with legislation regulating the sphere of employment and the observance of the rights of employees. Employees can turn to the inspectorate with their complaints, which the inspectorate investigates. The SLI is mandated to investigate administrative offences in employment relations, as envisaged by Article 204.<sup>17</sup> (Violation of Prohibition of Discrimination in the Code of Administrative Offences), and can impose fines from EUR 142 to EUR 714 (LVL 100 to LVL 500) in respect of physical persons. Thus, employers who discriminate against a person on the grounds of that person's race, ethnic origin, gender, age, disability, sexual orientation or religion or belief in refusing to conclude a labour contract, in dismissing the person or during the term of the person's contract can be punished according to this article.

In addition to these ordinary avenues for addressing discrimination, two 'extraordinary' institutions need to be noted.

- Ombudsman (the Ombudsman's Office)

In March 2007, the Ombudsman's Office replaced its predecessor, the National Human Rights Office, which had been established in 1995. The office is an independent institution entrusted with the task of promoting the observance of human rights and the principle of good governance. It can, inter alia, examine and review complaints concerning human rights violations, and can respond to such violations.

The Ombudsman then has to attempt to resolve conflicts through conciliation. If this fails, the Ombudsman advises the parties of his opinion and proposals in the form of recommendations, and also presents his suggestions and recommendations for the prevention of human rights violations to the relevant institution or official; however, the Ombudsman's Office cannot enforce its recommendations,<sup>244</sup> nor can it apply any fines. After the examination of the complaint it can bring a case in an administrative court if this is in the public interest. Given its mandate, it could be presumed that resolving any cases of discrimination would be in the public interest – or subject to a civil case – only in cases where differential treatment is at issue.

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<sup>242</sup> Latvia, Law on the restoration of the force of the Republic of Latvia Law on Labour Inspection 28.04.1939, (*Par Latvijas Republikas 1939. gada 28. aprīļa likuma «Par darba inspekciju» spēka atjaunošanu*), 04.05.1993. Available at: <http://m.likumi.lv/doc.php?id=60213>.

<sup>243</sup> Latvia, State Labour Inspection Law (*Valsts darba inspekcijas likums*) 13.12.2001. Available at: <http://likumi.lv/doc.php?id=177910>.

<sup>244</sup> This was amply demonstrated by a 1997 case, in which a person was forced to leave the police service because of their sexual orientation. Although the National Human Rights Office was of the opinion that discrimination based on sexual orientation had occurred, the matter was not resolved, as the authorities involved disagreed with the findings of the office.

The Ombudsman also has the authority to initiate an abstract review case in the Constitutional Court concerning the conformity of legal provisions with norms of higher force and the conformity of national legal provisions with the international treaties that are binding on Latvia; it has no authority to bring concrete review cases where the rights of a specific individual have been violated. For more information, see under Section 7 (Specialised bodies).

- The Constitutional Court

The Constitutional Court was established in 1996. It examines the compliance of laws and other legal norms with the Constitution, as well as considering other cases under its jurisdiction. It has the right to declare provisions that are found not to be in compliance with a higher legal norm to be null and void.

According to Article 17 of the Constitutional Court Law, the following have the legal standing to apply to the Constitutional Court regarding the compliance of laws and international treaties signed or ratified by Latvia with the Constitution, the compliance of other legal acts with legal norms (acts) of higher legal force, as well as the compliance of Latvian national legal norms with the international agreements that have been entered into by Latvia: the President; the Parliament; not less than 20 members of the Saeima; the Cabinet of Ministers; the Prosecutor General; the Council of State Control; the council of a municipality; the National Human Rights Office; a court, when reviewing an administrative, civil or criminal case; a judge of the Land Registry when entering real estate - or thus confirming property rights on it - in the Land Book; and an individual whose fundamental rights as established by the Constitution have been violated. Constitutional complaints and judicial referral mechanisms were established by the amendments adopted in 2000. A constitutional complaint can be submitted by a person who considers that their basic rights have been violated by a legal norm that contradicts a higher norm. The complaint may be submitted only after all other remedies have been exhausted (in exceptional cases the court may decide to accept the complaint even if this has not been done) and within six months of the final decision in the case.

Constitutional complaints remain widely used, but there have been few discrimination cases. There have been no complaints of discrimination on the grounds of gender, racial or ethnic origin, sexual orientation or disability, in two cases age discrimination has been alleged and in one case discrimination on grounds of nationality. In the first case, the provisions of the Law on Higher Educational Establishments and of the Law on Scientific Activity, which set an age limit for occupying administrative positions in scientific institutions, higher educational establishments and higher academic positions, were successfully challenged, although the court did not decide the case based on a discrimination argument,<sup>245</sup> while in the second case a similar challenge to the age limit in the civil service failed.<sup>246</sup>

b) Barriers and other deterrents faced by litigants seeking redress

The payment of court expenses and the state levy are waived in cases that are based on an employment relationship and in those that have been initiated by the prosecutor (Article 43(1), paragraphs 1 and 5 of the Civil Procedure Law, Article 218 of the Labour Law). However, this does not include lawyers' fees because, under the law on legal aid provided for by the state<sup>247</sup> that was adopted in 2005, a mechanism has existed whereby persons in need can be granted free legal assistance in criminal and civil cases. Cabinet of Ministers Regulations No. 558 set conditions for receiving legal aid, according to which the person's particular situation, property status and income level do not suffice for partial or full

<sup>245</sup> Constitutional Court, Case No 2002-21-01, 20.05.2003, available at: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-21-01\\_Spridums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-21-01_Spridums.pdf).

<sup>246</sup> Constitutional Court. Case No 2003-12-23, 18.12.2003.

<sup>247</sup> Latvia, State-insured Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*), 17.03.2005.

protection of their rights. Free legal aid is to be provided to persons whose status is defined as low-income or indigent, and the person who seeks such aid is required to submit documents attesting to their income level, property status and special situation. However, the wide gap between those who can claim state legal aid and those who can afford to pay private lawyer's fees may be one of the key reasons why few cases are brought to the court, and those that are heard are brought predominantly by NGOs and selected legal professionals.

An issue that needs to be addressed is that of disability-related accessibility to these remedies. The absolute majority of central and local government institutions remain physically inaccessible.<sup>248</sup> Although those buildings that have been built recently have had to address the accessibility issue, 'accessibility' often stops at getting into the building, with movement within the building remaining a problem. There are no rules on the provision of information in Braille, and the only context within which sign language interpretation must be provided by the state is that of court proceedings.

c) Number of discrimination cases brought to justice

In Latvia, there are no available statistics on the number of cases related to discrimination brought to justice.

d) Registration of discrimination cases by national courts

In Latvia, discrimination cases are not registered as such by the national courts.

The exception is the Supreme Court database on case law concerning the Labour Law, which includes discrimination cases. These are not classified by ground.<sup>249</sup> There were several cases before the Supreme Court on gender discrimination in 2012,<sup>250</sup> and on gender discrimination and age discrimination in 2013.<sup>251</sup> There has been no case law in 2014, 2015, 2016 or 2017 on grounds of race, ethnic origin, disability, religion or belief, sexual orientation and age.<sup>252</sup>

There have been no cases registered based on the anti-discrimination aspect of Article 149 of the Administrative Offences Code.

## **6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)**

a) Engaging on behalf of victims of discrimination (representing them)

In Latvia, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination.

According to Article 10(3) of the Law on Associations and Foundations, those organisations and foundations whose aims are the protection of human rights and individual rights have the right to bring a case before state institutions and courts on behalf of a victim (with

<sup>248</sup> Ombudsman (2011), *Annual Report for 2010*. According to the 2010 Report of the Ombudsman's Office, local authorities indicated that their services were accessible to persons with disability in only 26 % of cases. – Tiesībsarga 2010. gada ziņojums, at [http://www.tiesibsargas.lv/uploads/content/legacy/Tiesibsarga%20gada%20zinojums\\_2010.pdf](http://www.tiesibsargas.lv/uploads/content/legacy/Tiesibsarga%20gada%20zinojums_2010.pdf), p. 74.

<sup>249</sup> Latvia, Supreme Court. Case Law (*Judikatūra*), at <http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-civillietu-departaments/tezes-darba-lietas-2003-2012/3darba-likums/>.

<sup>250</sup> Latvia, Supreme Court Senate, Case No. SKC-684/2012 (E.L. v. State Joint Stock Company International Airport Riga (E.L. v. Valsts akciju sabiedrība „Starptautiskā lidosta Rīga”); Supreme Court Senate, Case No. SKC-684/2012), at <http://at.gov.lv/en/court-proceedings-in-the-supreme-court/archive-of-case-law-decisions/senate/chronological-order/2012/>.

<sup>251</sup> Latvia, Supreme Court Senate, Case No. SKC-2504/2013, 06.12.2013.

<sup>252</sup> Latvia, Supreme Court Case Law database, at <http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/?q=diskrimin%C4%81cija#filesSearch>.

their consent) in matters related to discrimination.<sup>253</sup> These include civil and administrative cases.

Until early 2014, associations were entitled to represent a victim or victims of discrimination before all three court instances.

However, according to the amendments to the Civil Procedure Law (in force since 4 January 2014),<sup>254</sup> the right to legal representation at the instance of cassation is reserved to the person participating in the case or to their advocate (defence counsel). This excludes the possibility of legal representation by other persons with a law degree (e.g. NGO staff), who are not participants in the case and do not have the status of an advocate, including in civil claims relating to discrimination cases. The amendments were adopted allegedly to strengthen the role of advocates in civil cases to ensure the quality of claims. However, they may impact on access to justice for certain vulnerable groups, including victims of discrimination, as cases of discrimination have predominantly been brought before the courts by NGOs or legal practitioners who are not advocates. These amendments contravene the non-regression clauses of the equality directives.

This contravenes an earlier Constitutional Court judgment. In 2003 the court ruled on the constitutionality of several provisions of Civil Procedure Law requiring parties before court of cassation to be represented by an advocate. The applicant claimed that she, like the majority of people, could not afford to pay for the services of an advocate. The Constitutional Court recognised that, aside from advocates, there were other persons with sufficient skills to provide qualified legal representation, such as judges and prosecutors (in the cases determined by law), holders of a PhD in Law, specialist NGOs providing legal assistance, and state-funded institutions providing legal assistance free of charge, as well as persons with a university education in law who have passed the examinations for the relevant knowledge and skills, etc. Thus, the court believed that there were other, more lenient means for achieving the legitimate aim, especially in the provision of qualified legal representation in the cassation court. It also ruled that the measures in relevant laws on the recognition of a person as needy were insufficient to provide legal assistance to those who need it free of charge.

According to Article 12(4) of the Law on Trade Unions, trade unions have the right 'within their competence to represent and protect the rights and interests of their members without specific authorisation.'

#### b) Engaging in support of victims of discrimination

In Latvia, associations, organisations and trade unions are entitled to act in support of victims of discrimination, by providing opinions.

Article 183 of the Administrative Procedure Law provides for *amicus curiae* (Views of Associations of Persons): an association of persons which is considered a recognised representative of interests in some sectors and from which expert opinions may be expected, which may petition the court in writing to permit it to submit its opinion regarding the facts or rights in the relevant sector. This procedure applies to administrative courts. If the court considers that the opinion of the relevant association of persons may assist the court in taking an objective decision in the matter, it shall determine questions on which the association of persons may submit its opinion. Such questions must relate to the matter to be adjudicated. The association of persons may not give a factual or legal assessment in the specific administrative case.<sup>255</sup>

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<sup>253</sup> Latvia, Law on Associations and Foundations, 30.10.2003, Article 10(3).

<sup>254</sup> Latvia, Amendments to the Civil Procedure Law (*Grozījumi Civilprocesa likumā*), 19.12.2013, available in Latvian at: <http://likumi.lv/doc.php?id=263490>.

<sup>255</sup> Latvia, Administrative Procedure Law (*Administratīvā procesa likums*), 25.10.2001, at <http://likumi.lv/doc.php?id=55567>.

c) *Actio popularis*

In Latvia, national law does not allow associations / organisations / trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

The law is silent on this issue, and currently it does not seem possible that an attempt to bring an *actio popularis* would be accepted.

d) Class action

In Latvia, national law does not allow associations / organisations / trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

While there is nothing to prevent engagement on behalf of several complaints, there is also nothing to specifically authorise them, thus the law is silent on this issue and the issue of possible class actions remains unresolved; since class actions have so far been foreign to the Latvian legal system, it seems safe to state that, in the absence of legislative action, they remain impossible.

### **6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)**

In Latvia, national legislation requires a shift of the burden of proof from the complainant to the respondent.

Article 29(3) of the Labour Law provides for a shift (or sharing) of the burden of proof in cases of all types of discrimination related to an employment relationship covered by this law. It reads as follows: 'if in the case of a dispute an employee indicates conditions which may serve as a basis for his or her direct or indirect discrimination based on gender, the employer has a duty to prove that the differential treatment is based on objective circumstances not related to the gender of the employee, or also that belonging to a particular gender is an objective and substantiated precondition for the performance of the relevant work or the relevant employment', thus complying with the requirements of the respective articles of the two directives and Directive 97/80/EC in so far as employment relationships are concerned. Article 29(9) provides that the provisions of the article (thus including those on the burden of proof) also apply to the prohibition of differential treatment based on the race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances of an employee. Article 9 specifically applies the shared burden of proof to victimisation cases, while harassment and instructions to discriminate come under Article 29.

The shift of the burden of proof is also provided for by the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4(1)) in relation to gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin (regarding access to self-employment and access to goods and services by self-employed persons); by the Consumer Rights Protection Law (Article 3.<sup>1</sup>(5)) in the sphere of access to goods and services in relation to gender, race, ethnic origin and disability; by the Law on Education (regarding access to education); and by the Law on Support to Unemployed Persons and Job Seekers (regarding access to active employment measures and measures to reduce unemployment). However, the provisions in the Law on Support to Unemployed Persons and Job Seekers only apply to gender, race and ethnic origin – thus leaving the other Directive 2000/78 grounds without protection. The Law on Education's list of grounds does not include age, disability (which may be interpreted as coming under health condition) or sexual orientation.

The Administrative Procedure Law, which has been in force since 1 February 2004, introduces the principle of 'objective examination' in an administrative procedure. Article 103(2) provides that 'within the course of administrative proceedings, while performing its duties, a court shall itself (ex officio) objectively determine the facts of the case and provide a legal assessment of these, adjudicating the matter within a reasonable time', thus corresponding to the exception from the requirement of a shift in the burden of proof contained in Article 8(5) of the Racial Equality Directive and Article 10(5) of the Employment Equality Directive.

Additionally, Article 150, on the burden of proof, provides that the institution has to prove the facts on which it is relying as the grounds for its objections, that the claimant, to the extent possible, shall participate in the collecting of evidence, and that, if the evidence submitted by the parties is not sufficient, the court shall collect it on its own initiative. Five discrimination cases (on gender and the calculation of unemployment benefits) have been brought under this law. The law also applies in those civil service cases to which the Labour Law does not apply.

The shift in the burden of proof does not apply in any other sphere. The Civil Procedure Law requires that each party prove the facts that he or she is referring to. The Criminal Procedure Law (Article 19.1) provides that the burden of proof is on the prosecution and that any doubts are interpreted to the benefit of the accused. The Constitutional Court Law does not make any exception from the requirement that both parties substantiate their views, nor does it permit the court to make its own assessment in cases where discrimination is alleged. It is true that, in one such case – a case on the requirement on persons wishing to acquire the status of unemployed to possess a permanent residence permit – the Constitutional Court, while refusing to satisfy the complaint as it was, nevertheless distinguished a particular category of persons (spouses of Latvian citizens whose presence in Latvia may be presumed not to be intended to be temporary) and found that such a requirement was unconstitutional in relation to them. It should be noted that the claimant had not referred separately to this category of persons, and this had only been referred to by the respondent. This shows that, to some extent, the court might act on its own initiative, but it cannot be required or relied upon to do so, and there is certainly no provision on a shift in the burden of proof in cases alleging discrimination.

So far, the shift in the burden of proof has been applied in a number of cases involving access to employment and coming under the terms of the Labour Law – in three gender-based discrimination cases, one race-based discrimination case and one case on sexual orientation.

In practice, in court hearings, claimants themselves have not infrequently had to prove that they have been discriminated against, in accordance with the general procedure of adversarial argumentation. This is evidenced by Supreme Court judgments where lower courts have been criticised for failing to shift the burden of proof in discrimination cases (2007 - employment, disability;<sup>256</sup> 2012 – employment, gender).<sup>257</sup> There have also been cases where the court has formally referred to the provision on the burden of proof, yet the claimant was still required to prove the claim.

It can be concluded that the requirements of the two directives concerning the burden of proof are currently complied with in relation to all grounds in cases related to employment relationships, including civil service relationships, access to goods and services and education, and are generally complied with in administrative cases, which would include state-provided social security cases, however, how effective the principle of 'objective investigation' is in discrimination cases will only become apparent with case law.

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<sup>256</sup> Latvia, Supreme Court Civil Case Department, *R. S. v. Riga New St Gertrude Evangelical Lutheran Church* (R.S. v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze), 11.04.2007.

<sup>257</sup> Latvia, Supreme Court Senate, No. SKC-684/2012, *E.L. v. State Joint Stock Company International Airport Riga*, (E.L. v. Valsts akciju sabiedrība „Starptautiskā lidosta Rīga”).

#### 6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Latvia, there are legal measures of protection against victimisation.

Article 9 of the Labour Law provides for protection against victimisation:

'Infliction of a punishment on an employee<sup>258</sup> as well as creation of direct or indirect unfavourable consequences to the employee, due to the fact that the employee within the framework of a labour relationship avails himself of his rights in a permissible manner, shall be prohibited.'

This would include cases of victimisation on the grounds of a person's complaints about the violation of the principle of equal treatment. Since the 5 July 2004 amendments, part 2 of this Article has applied the sharing of the burden of proof to victimisation cases.

Even if Article 9(2) does not expressly mention discrimination or differential treatment, only the 'adverse consequences', the *Abramova* case,<sup>259</sup> decided before the entry into force of the new Labour Law, gives grounds to think that the courts might be prepared to view victimisation in the context of discrimination, and the provision of Article 29(8) of the Labour Law establishing the right to compensation refers both to differential treatment and to the creation of adverse consequences.

Protection against victimisation is contained in Article 34(2) of the Law on Social Security, which provides that:

'Infliction of a punishment on a person as well as the creation directly or indirectly of adverse consequences to him/her because of the fact that the person avails himself or herself, in a permissible manner, of the protection of his/her rights in relation to the prohibition of differential treatment shall be prohibited'.

Such protection is also contained in Article 3.<sup>1</sup>(10) of the Consumer Rights Protection Law.

It must be noted that, both under the Labour Law and under the amendments to the Law on Social Security, the wording of the victimisation clause, by referring to 'his (or her) rights', seems to confine the prohibition against discrimination to the actual victim of the discrimination, with witnesses and other persons assisting the complainant thus being excluded. Similarly, victimisation is prohibited by the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 6), the Consumer Rights Protection Law (Article 3.<sup>1</sup>(10)), the Law on Support to Unemployed Persons and Job Seekers (Article 2.<sup>1</sup>(8)), the Education Law (Article 3.1(4)), and the Law on Patients' Rights (Article 3(4)).

Another instance of protection against victimisation is that provided by the Law on the Ombudsman: Article 23(3) of this law provides that 'the applicant may not be punished and no direct or indirect adverse consequences may be caused to him because of submitting an application, complaint or proposal to the Ombudsman's Office or for cooperating with the Office'; this, however, obviously applies only to cases that are being investigated by the office.

All the areas included in Directives 2000/43 and 2000/78 are covered by the laws listed above that prohibit victimisation and by Article 92 of the Constitution, which provides for

<sup>258</sup> The term 'person' cannot be interpreted as excluding protection from direct discrimination of a group. In these cases, *argumentum a fortiori* should be applied, i.e. if a person cannot be treated less favourably, then it follows that nor can a group.

<sup>259</sup> Latvia, Latgale regional court, Case No.2-268 A/01.11.2000 (*Abramova v. 'Latgales druka'*), 01.11.2000. Discrimination was found to be on the grounds of victimisation due to the fact of defence of her rights, even if this ground was not listed in the exhaustive list of grounds prohibiting discrimination in Article 1 of the old Labour Code.



'the right to commensurate compensation to persons whose rights have been infringed without a basis'.

Another case on victimisation, *R.K. v. Valsts Mežu dienests*, was decided in 2005 (at first and second instance) and in 2006 (by the Supreme Court Senate). The claimant had been subjected to various disciplinary measures, all of which were repealed by the State Civil Service Office or by a court. Since, unlike his colleagues performing the same job, R.K. was not paid the regular premiums, he considered he had been victimised because of defending his rights. The court held for the claimant, and awarded him moral damages.

It can be concluded that a prohibition of victimisation exists in the framework of employment relationships, including civil service relationships, under the terms of the Labour Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators covering self-employment, the Law on Support to Unemployed Persons and Job Seekers. Similarly, prohibition of victimisation is prohibited in relation to social protection (the Law on Social Security), access to goods and services (the Consumer Rights Protection Law), education (the Law on Education), and in the Law on Patients' Rights. There is also protection from victimisation in relation to a complaint to the Ombudsman's Office, within the respective spheres of application and in relation to the grounds covered (which are incomplete).

## **6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)**

### **a) Applicable sanctions in cases of discrimination – in law and in practice**

In the context of anti-discrimination, specific sanctions are contained in the Labour Law, the Consumer Rights Protection Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Education, the Criminal Law and the Administrative Offences Code.

#### **Criminal sanctions**

On 25 September 2014, the Parliament amended the Criminal Law.

Article 48, lists aggravating circumstances of a criminal offence, including 'racist, national, ethnic or religious' motivation (Paragraph 1, Clause 14).

Article 78(1) envisages criminal liability for 'incitement of national, ethnic, racial and religious hatred' and deals exclusively with 'incitement' (i.e. no violence and no group or institutional aspect) and lays out the options of a fine, community service, short term custody or imprisonment for up to three years

Article 78(2) covers acts committed by 'a group of persons, or a state official or a responsible employee of a company or an organisation' or using an 'automated data processing system' (i.e. – the internet), and provides for a punishment of deprivation of liberty for up to five years, community service or a fine. Paragraph 3 covers the same crime of incitement if it is 'associated with violence or threats' or is committed by an 'organised group' and provides for up to 10 years' imprisonment, with or without probationary supervision for a term of up to three years.

Article 149.<sup>1</sup> provides:

- 1) for acts of racial, national, ethnic or religious discrimination or the violation of another type of discrimination, if considerable harm has been caused or if they are associated with violence, fraud or threats, or where they are committed by a group of persons, a state official or a responsible employee of an undertaking (company) or organisation, or if they have been committed by using an automated system of data

- processing, the applicable sentence is deprivation of liberty for a term not exceeding one year, short-term custody, community service or a fine;
- 2) for the same activities, if committed by a state official or a responsible employee of a company or an organisation or 'a group of persons', or using an 'automated data processing system' (i.e. – the internet), the applicable sentence is deprivation of liberty for a term not exceeding three years, short-term custody, community service or a fine.

Article 150 criminalises 'Incitement of social hatred and enmity':

- (1) acts aimed to incite hatred or enmity on the grounds of a person's gender, age, disability or any other feature, if substantial harm was caused by such act, shall be punished with imprisonment for up to one year,<sup>260</sup> short-term imprisonment, community service or a fine;
- (2) the same acts, if committed by a state official, or a responsible employee of an undertaking (company) or organisation, or a group of persons, or if they are committed using automated data processing systems, shall be punished with imprisonment of up to three years, short-term imprisonment, community service or a fine;
- (3) the same acts, if associated with violence or threats, or if committed by an organised group, shall be punished with imprisonment of up to four years, short-term imprisonment, community service or a fine.

#### Administrative sanctions

Various specialised public bodies with powers in relation to labour or consumer protection can impose administrative sanctions, such as fines. The State Labour Inspectorate can impose fines from EUR 124 to EUR 714 for violations of the prohibition of discrimination in employment relationships (Article 204.<sup>17</sup> of the Administrative Offences Code). The outcome of the proceedings can also result in a halt to the discrimination and the restoration of equality.

According to the Administrative Offences Code (Article 166.<sup>13</sup>), the Centre for Consumer Rights Protection can impose fines for the violation of the Advertising Law, which prohibits discriminatory advertising on grounds of race, skin colour, gender, age, religious, political or other convictions, national or social origin, financial status or other circumstances (Article 4(2)1).

On 4 June 2015, the Saeima (Parliament) amended the Latvian Administrative Offences Code (*Grozījumi Latvijas Administratīvo pārkāpumu kodeksā*).<sup>261</sup> Article 155.<sup>14</sup> (Failure to Observe the Rights of Air Transport Passengers) was supplemented with a provision whereby, in the event of any violation of the right of persons with disabilities or persons with reduced mobility to use air transportation services, a warning shall be issued or a fine of EUR 450 to EUR 3 000 shall be imposed on the legal persons concerned.

#### Civil remedies

Article 29(8) of the Labour Law provides that:

'If the prohibition of differential treatment and prohibition to cause adverse consequences is violated, the employee, in addition to other rights provided for by

<sup>260</sup> Latvia, Amendments to the Criminal Law (*Grozījumi Krimināllikumā*), 08.06.2017, in force from 01.01.2018, at <https://likumi.lv/ta/id/291734-grozijumi-kriminallikuma>.

<sup>261</sup> Latvia, Amendments to the Latvian Administrative Offences Code (*Grozījumi Latvijas Administratīvo pārkāpumu kodeksā*), 26.09.2013, available in Latvian at <http://likumi.lv/doc.php?id=260957>.

this law, has the right to request compensation for damages and compensation for moral damages. In the case of a dispute the amount of compensation for moral damages shall be determined by the court at its discretion’.

The possibility to claim moral damages is also expressly provided for in the Consumer Rights Protection Law (Article 3.<sup>1</sup>(11)), the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 5) and the Law on Education (Article 3.<sup>1</sup>(6))

Similarly, Article 92 of the Administrative Procedure Code provides that ‘Everyone is entitled to claim compensation for financial loss or personal harm, including moral harm, which has been caused to him or her by an administrative act or an actual action of an institution’. The amount of compensation for financial loss caused by an administrative act of an institution is set out in the Law on Reparation of Damages caused by State Administrative Institutions.<sup>262</sup>

Generally, non-pecuniary damages is a field under development in Latvian law; until the adoption of the Law on Reparation of Damages caused by State Administrative Institutions, the only case when Latvian law allowed for non-pecuniary damages was that provided for in Article 1635 of the Civil Law in cases of mutilation, unlawful deprivation of liberty, defamation<sup>263</sup> and rape.

Individuals may seek a halt to the discriminatory practices (of either a representative of the public authorities or a private person) before the court, as well as restoration of their violated rights or status, etc. Potentially, an individual might request that a reasonable accommodation is made as well.

Individuals may also complain to the Ombudsman’s Office in cases where the outcome can be a friendly settlement.

As far as disciplinary liability of civil servants is concerned, there are no provisions specifically relating to cases of discrimination. For discriminatory activities, a civil servant may be punished on the basis of general provisions, e.g. Article 17 of the Cabinet of Ministers Regulations on Disciplinary Punishments of Civil Servants provides for liability for unreasonably failing in the obligations of a civil servant.

If this has caused substantial detriment to the civil service or to an individual, the civil servant may be punished by dismissal from the civil service.

Another article related to cases of discrimination is Article 30, allowing for the punishment of a civil servant for impolite or intolerant attitudes towards individuals or colleagues. However, the disciplinary punishment in this case can be a reprimand. Thus, the punishment of a civil servant for acts of discrimination is subject to the interpretation of the respective disciplinary provisions and, in order to apply them effectively, the awareness of civil servants, including those who can impose punishments, must be raised.

#### b) Ceiling and amount of compensation

There is no maximum amount for damages under the Civil Law, yet Article 14 of the Law on Reparation of Damages caused by State Administrative Institutions sets the maximum amount of non-pecuniary damages for personal harm at EUR 7 114, or EUR 9 960 in cases

<sup>262</sup> Latvia, Law on Reparation of Damages caused by State Administrative Institutions (*Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums*), 02.06.2005. at <http://likumi.lv/doc.php?id=110746>.

<sup>263</sup> In the *Muhina* case (Latvia, Supreme Court Senate case No.SKC-297, *Muhina v. Central Prison*, 08.02.2002), the court was not prepared to award moral damages to *Muhina* based on Article 2352.a (defamation), as the provisions of the Labour Code then in force, in the opinion of the Senate, were *lex specialis* in the field of equal treatment in labour relationships, and the refusal to employ *Muhina* could not be regarded as an injury to her honour or dignity, as Article 2352.a only applies to cases where untrue information has been disseminated.

of grave personal harm, and EUR 28 457 if harm has been caused to life or grave harm has been caused to health. The maximum amount of damages for moral harm is set at EUR 4 268 or EUR 7 114 in cases of grave moral harm and at EUR 28 457 if harm has been caused to life or grave harm has been caused to health.

It is difficult to predict, in the absence of any case law, whether, in cases of discrimination by the state institutions at final instance, the courts would be ready to award damages for both personal harm and moral harm. The definitions of personal harm and moral harm in the law allow cases of discrimination to come under the terms of both of them, and the law itself permits applications for several kinds of damages at the same time. It has to be noted that Latvian law does not provide for punitive damages.

In the two defamation cases brought under the Civil Law and related to defamation and incitement to racial discrimination, the damages awarded were EUR 4 800 (LVL 3 000) to each of the claimants in the *Los Amigos* case,<sup>264</sup> and a symbolic EUR 50 (LVL 30) in the *Steel* case.<sup>265</sup> In the *Smagars* case,<sup>266</sup> on disability-based discrimination in providing access to a public place, the amount of damages awarded was around EUR 4 800 (LVL 3 000).

Between 2005 and 2017, there were over a dozen known discrimination cases before the courts that resulted in a favourable outcome for the victim (at least 13 concerning discrimination on the ground of gender, two on the ground of disability, one on age and one on race discrimination). The overwhelming majority of those cases related to the realm of employment. In 2005 (on employment, gender and property status), the court awarded EUR 1 500 (LVL 1 000).<sup>267</sup> Three of the cases were conciliation agreements confirmed by the courts. In 2008, the claimants were awarded EUR 7 142 (LVL 5 000) (relating to gender (pregnancy, dismissal)), and EUR 1 142 (LVL 800) (on gender in relation to a job interview). In one case in 2007, the claimant was awarded EUR 4 285 (LVL 3 000) (on disability and dismissal). In 2010, a claimant was awarded EUR 428 (LVL 300) (on gender and recruitment). In 2011, one claimant was awarded EUR 1 428 (LVL 1 000) (on employment and disability) as compensation for non-material damages by the appeal court. Five cases in 2010-2011 (on gender) concerned a recalculation of unemployment benefits, and were tried by administrative courts. Although the courts established indirect discrimination, leading to recalculation of unemployment benefits, it is not known whether the claimants also sought moral compensation. In 2013, in a gender discrimination case, the court awarded compensation for non-material damages of EUR 2 845 (LVL 2 000).<sup>268</sup> In another gender discrimination case, the court awarded 6 260 EUR (LVL 4 400).<sup>269</sup> In 2014, in a gender discrimination case, the appeal court awarded the claimant EUR 1 000 (LVL 702.65), and in an age discrimination case – EUR 1 422 (LVL 1 000).<sup>270</sup> In 2015, in a discrimination case on grounds of disability (dismissal) the claimant was awarded EUR 1 422.<sup>271</sup> There is no publicly available information on discrimination cases decided in 2016. In 2017, in a discriminatory dismissal case on grounds of disability, the claimant was awarded EUR 1 000.<sup>272</sup>

<sup>264</sup> Latvia, Supreme Court, Case PAC-244, 09.04.2003.

<sup>265</sup> Latvia, Latgale District Court of Riga, Case No C29240503, 08.09.2003, <http://providus.lv/article/spriedums-civillieta-sakara-ar-dzordza-stila-prasibu-pret-politisko-organizaciju-brivibas-partija-un-valsts-bezpelnas-sia-latvijas-televizija>.

<sup>266</sup> Latvia, Riga regional court, Case No C04386004, 11.07.2005, <http://cilvektiesibas.org.lv/site/record/docs/2012/02/06/RS11julijs.pdf>.

<sup>267</sup> Latvia, Cēsu district court, Case no C11019405, A.S. v. Straupe Parish Council (Straupes pagasta padome), 05.07.2005, [http://cilvektiesibas.org.lv/site/record/docs/2012/02/06/Spriedums\\_Cesis.pdf](http://cilvektiesibas.org.lv/site/record/docs/2012/02/06/Spriedums_Cesis.pdf).

<sup>268</sup> Latvia, Supreme Court Senate, Case No. SKC-2846-13, 18.12.2013.

<sup>269</sup> Latvia, Riga City Zemgale District Court, Case No. C31404213 (archive No. C-4042-13/9), 20.11.2013.

<sup>270</sup> Latvia, Latgale Regional Court, Case No. C12102213 (archive No. CA-0121-1), 30.04.2014.

<sup>271</sup> Latvia, Liepāja Court, Case No. C20 2558 14, *Pāvilosta Regional Local Government v. [anonymized]*, 22.10.2015.

<sup>272</sup> Latvia, Riga Regional Court Civil Cases Court Collegium (*Rīgas apgabaltiesas Civillietu tiesas kolēģija*), Judgment of 22 December 2016, Case No. C33533415.

There have been several court cases where, upon the establishment of the fact of discrimination, the court has nevertheless required proof of damages by the claimant to seek moral damages. In 2013, the Supreme Court Senate, referring to Court of Justice of the European Union jurisprudence, underlined that there is no need to specifically prove the existence of moral damage in cases of age discrimination, as moral damage is presumed from the very fact of age discrimination in the employment relationship.<sup>273</sup>

c) Assessment of the sanctions

The number of court cases concerning discrimination on grounds of ethnicity, religion, disability, age or sexual orientation resulting in compensation for the victim remains limited. The majority of cases concern gender discrimination in the sphere of employment. The average moral compensation awarded in known discrimination cases is EUR 1 428 (LVL 1 000). The highest compensation awarded through a conciliation agreement was EUR 7 142, in 2008. Such a small amount of compensation can hardly be considered effective, proportionate and dissuasive. Cases of forward-looking remedies, e.g. ordering the Health Inspectorate to issue an administrative act to order certain health service providers to ensure access to persons with disabilities to the premises, remain few.

To date, there has been no case when Article 149.<sup>1</sup> of the Criminal Law has been applied. In the case of administrative sanctions, the State Labour Inspectorate has imposed fines mostly in cases of discriminatory job ads indicating preferences for a specific gender or age. One advertisement specifically indicated a preference for a certain ethnicity. The sanctions imposed have ranged from a warning to a fine of EUR 70 to EUR 535. However, the majority of fines range from EUR 200 to EUR 300, which cannot be considered dissuasive. The Consumer Rights Protection Centre has imposed fines for discriminatory advertising (relating to race/ethnic origin and sexual orientation) in several cases – of EUR 2 250,<sup>274</sup> EUR 8 000<sup>275</sup> and EUR 2 278.

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<sup>273</sup> Latvia, Supreme Court Senate, Case No. C32276312 (SKC – 1702/2013), 29.11.2013.

<sup>274</sup> Latvia, Consumer Rights Protection Centre, (*Patērētāju tiesību aizsardzības centrs*), Decision No. E04-DAU-154, 14.08.2007, at [cilvektiesibas.org.lv/media/record/docs/2012/02/06/reklama.pdf](http://cilvektiesibas.org.lv/media/record/docs/2012/02/06/reklama.pdf).

<sup>275</sup> Latvia, Consumer Rights Protection Centre, Decision No. E03-RIG 132, 17.04.2007, at [cilvektiesibas.org.lv/media/attachments/29/01/2013/FAMARDESI1.pdf](http://cilvektiesibas.org.lv/media/attachments/29/01/2013/FAMARDESI1.pdf).

## **7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)**

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The Ombudsman (*Tiesībsargs*) is the body designated for the promotion of equal treatment according to Article 13 of the Race Equality Directive. The mandate of the office is more general: the protection of human rights and ensuring that the principle of good governance is observed, thus the promotion of equal treatment is only one of its tasks. According to Article 11(2) of the Law on the Ombudsman, the Ombudsman promotes the observance of the principle of equal treatment and the elimination of all kinds of discrimination, without specifying the grounds.

- b) Political, economic and social context for the designated body

Following the Ombudsman's re-election by the Parliament for a second term in March 2017 (he was previously elected in 2011), there is modest support for the Ombudsman. However, this is not specifically related to the equality mandate. Overall, human rights issues remain rather low on the political agenda.

The general financial crisis in Latvia from 2009 to 2012 and the office's weakness due to internal conflict inevitably affected the Ombudsman's Office and its effectiveness. Its budget was dramatically cut from EUR 1 797 626<sup>276</sup> in 2008 to EUR 794 355 in 2010. In 2011, the budget was slightly raised to EUR 813 597, in 2012 it was raised again to EUR 1 007 911, then in 2013 it was lowered to EUR 969 188, then in 2014 it was raised again to EUR 1 157 884 (LVL 1 257 384).<sup>277</sup> In 2015 the office's budget was EUR 1 144 522; in 2016 the budget was EUR 1 329 113,<sup>278</sup> and in 2017 the estimated budget was EUR 1 374 956.<sup>279</sup> While the budget has been increased after the financial crisis, it has never reached the pre-crisis level. There is no separate budget line for the office's equality and diversity function.

The number of employees went down from 51 at the end of 2008 to 35 in 2012. In 2017, the number of employees was 46.<sup>280</sup>

Overall, there has been hardly any popular debate about equality and diversity and of the equality mandate of the Ombudsman's Office.

- c) Institutional architecture

The Ombudsman's Office is a body with multiple mandates. It is a national human rights institution, a designated equality body and a good governance ombud. It is also responsible for the monitoring of the implementation of the UN Convention on the Rights of Persons

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<sup>276</sup> The budget was also high because of infrastructure costs due to a move to a new office, the hiring of new staff and the expansion of the mandate.

<sup>277</sup> Ministry of Finance (2014) 'Law on State Budget, Explanatory Report' (*Likuma "Par valsts budžetu 2014.gadam" paskaidrojumi*), p. 164, available in Latvian at: [http://www.fm.gov.lv/files/valstsbudzets/budzetapaskaidrojumi/FMPask\\_L\\_270114\\_bud2014\\_lab.pdf](http://www.fm.gov.lv/files/valstsbudzets/budzetapaskaidrojumi/FMPask_L_270114_bud2014_lab.pdf).

<sup>278</sup> Republic of Latvia Ombudsman (2016), *Annual Report*, p.261: 'The real annual expenditure is lower than the budget initially allocated by the Government'. Available at [http://www.tiesibsargs.lv/uploads/content/lapas/tiesibsarga\\_2016\\_gada\\_zinojums\\_1489647331.pdf](http://www.tiesibsargs.lv/uploads/content/lapas/tiesibsarga_2016_gada_zinojums_1489647331.pdf).

<sup>279</sup> Ministry of Finance (2017), Budget of the Office of the Ombudsman. Protection of human rights of private individuals, in Latvian at [http://fm.gov.lv/lv/sadalas/valsts\\_budzets/valsts\\_budzeta\\_vizualizacija/\\_budzets2017/tiesibsarga\\_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/](http://fm.gov.lv/lv/sadalas/valsts_budzets/valsts_budzeta_vizualizacija/_budzets2017/tiesibsarga_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/).

<sup>280</sup> Ministry of Finance (2017), Budget of the Office of the Ombudsman. Protection of human rights of private individuals.



with Disabilities,<sup>281</sup> and monitoring of forced expulsions under the EU's Return Directive (2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals).<sup>282</sup> Should Latvia ratify the Optional Protocol to the Convention against Torture (OPCAT), it will also become a national preventive mechanism.<sup>283</sup> The Ombudsman's Office also considers itself to be an ombudsperson for children.<sup>284</sup>

At the end of 2014, of the 42 employees, three members of staff worked in the Legal Equality Department, one of whom was a consultant on Roma issues, specifically on issues of discrimination. In March 2015, the legal equality department was closed down, and the staff were assigned to other departments.<sup>285</sup> The argument made by the office is that the right to non-discrimination is free-standing and therefore non-discrimination has been integrated in other departments. According to the Ombudsman, 'figuratively speaking, discrimination does not walk alone around the town.'<sup>286</sup>

In 2016, the number of staff was 45. In 2017, the position of a consultant on Roma issues, who was hired in 2011, was terminated. The regulation of the Ombudsman's Office of 12 February 2016 includes independent legal assistance to victims of discrimination among the tasks of the three departments – the department of civil and political rights, social, economic and cultural rights, children's rights.<sup>287</sup>

The Ombudsman's budget is envisaged for one function: the protection of human rights of private individuals.<sup>288</sup> There is no separate budget line for the equality and non-discrimination mandate.<sup>289</sup> Although the Ombudsman's Office claims that all legal staff deal with non-discrimination issues, there are no staff members working exclusively on non-discrimination issues, hence there is no longer specialisation on non-discrimination issues. Thus, information about the percentage of staff resources and budget dedicated to the equality mandate is unavailable.

Aside from the monitoring of UN CRPD, the equality/anti-discrimination mandate is considerably less of a priority than children's rights, the good governance mandate and topical issues under NHRI mandate. This is even more evident after the closure of the legal equality department, which also suffered from low capacity when several leading non-discrimination experts left the office in 2011.

The Ombudsman's Office equality mandate has limited visibility except for the activities related to the monitoring and implementation of the UN Convention on the Rights of Persons with Disabilities.

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<sup>281</sup> See: *Par Konvenciju par personu ar invaliditāti tiesībām*, Section 2, at <https://likumi.lv/ta/id/205248-par-konvenciju-par-personu-ar-invaliditati-tiesibam>.

<sup>282</sup> Latvia, Immigration Law, Section 50.<sup>7</sup> at <https://likumi.lv/doc.php?id=68522>.

<sup>283</sup> Republic of Latvia Ombudsman (LR Tiesībsargs) (2017) 'Ministru kabinetā vērtē iespēju tiesībsargam piešķirt Nacionālā preventīvā mehānisma funkciju', 27 April, at <http://www.tiesibsargs.lv/news/lv/ministru-kabineta-verte-iespeju-tiesibsargam-pieskirt-nacionala-preventiva-mehanisma-funkciju>.

<sup>284</sup> Republic of Latvia Ombudsman (LR Tiesībsargs) (2013) 'Ombudsman participates in the Annual Conference of European Child Ombudsmen Network' (*Tiesībsargs piedalās Eiropas Bērnu ombudu tīkla ikgadējā konferencē*), in Latvian at <http://www.tiesibsargs.lv/news/lv/tiesibsargs-piedalas-eiropas-bernu-ombudu-tikla-ikgadeja-konference>.

<sup>285</sup> Republic of Latvia Ombudsman (LR Tiesībsargs) (2015) 'Staff' (*Darbinieki*), at <http://www.tiesibsargs.lv/en/about-us/darbinieki>.

<sup>286</sup> Jurista vārds (2017) 'Vai tiesībsarga darbam ir jēga un rezultāts', 7 February 2017/Nr.6 (960).

<sup>287</sup> Republic of Latvia Ombudsman (LR Tiesībsargs) (2016). Regulation Nr 1 of the Ombudsman's Office of 12 February 2016, (Tiesībsarga biroja nolikums), at [http://www.tiesibsargs.lv/uploads/content/legacy/tiesibsarga\\_biroja\\_nolikums\\_12\\_02\\_2016\\_1482829503.pdf](http://www.tiesibsargs.lv/uploads/content/legacy/tiesibsarga_biroja_nolikums_12_02_2016_1482829503.pdf).

<sup>288</sup> Ministry of Finance (2017). Budget of the Office of the Ombudsman. Protection of human rights of private individuals, in Latvian at [http://fm.gov.lv/lv/sadalas/valsts\\_budzets/valsts\\_budzeta\\_vizualizacija/budzets2017/tiesibsarga\\_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/](http://fm.gov.lv/lv/sadalas/valsts_budzets/valsts_budzeta_vizualizacija/budzets2017/tiesibsarga_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/).

<sup>289</sup> Written response by the Ombudsman's Office to the LCHR by email on 28 February 2018.

d) Status of the designated body/bodies – general independence

i) Status of the body

In 2010, in the case concerning the budget planning procedure of several independent institutions, the Constitutional Court concluded that the 'Ombudsman's Office does not pertain to administrative institutions of the State subject to the Cabinet of Ministers, as established in Article 58 of the *Satversme* of the Republic of Latvia. Unlike the State president, the courts and the State Audit Office, the status of the Ombudsman has not been enshrined in the *Satversme*. However, taking into account the independence of the Ombudsman, the legislator has granted the Ombudsman's Office similar rights in the field of budget planning as those conferred to constitutional institutions mentioned in Section 19 (5) of the Law on Budget and Financial Management. The Ombudsman's Office is an independent State institution that ensures the execution of functions of the Ombudsman.'<sup>290</sup>

In 2015, the Ombudsman sent a letter to the *Saeima* (Parliament) proposing an amendment to the Constitution (*Satversme*) to strengthen the independent status of the Ombudsman.<sup>291</sup> Despite support for the amendments by leading constitutional law experts in Latvia, there has been no further development in the Parliament.

The Ombudsman is appointed by the *Saeima* (the Parliament) for a period of five years following a proposition by five MPs (Article 7). The Ombudsman can be dismissed from office following a conviction or – by a vote of the Parliament – for acts incompatible with the status of an ombudsman or for failing to carry out their duties (Article 5). The work of the office is financed from the state budget (Article 19 (1)), and it must report to the Parliament and the President of the State about its activities once a year (Article 15 (1)). The Ombudsman is independent in their activities and is governed only by law (Article 4). The Ombudsman appoints the deputy Ombudsman (Article 16 (1)). There are no barriers to the recruitment and management of staff.

In 2015 the Ombudsman's Office received 'A' status accreditation by the International Co-ordinating Committee of National Human Rights Institutions Sub-Committee on Accreditation.<sup>292</sup>

ii) Independence of the body

'The Ombudsman shall be independent in his or her activities and shall be governed exclusively by the law. No one has the right to influence the Ombudsman in the performance of his or her functions and tasks. The office of the Ombudsman may not be combined with membership of a political party' (Article 4).

There is no public evidence that the Ombudsman has not been independent in his activities. The Ombudsman's choice of priorities – children's rights issues and socio-economic issues, particularly after the economic crises in Latvia — have enjoyed public support. The Office of the Ombudsman has exercised independence, neutrality and objectivity in its written opinions. Nevertheless, the Ombudsman himself is not perceived as an advocate of LGBTI rights issues.

<sup>290</sup> Republic of Latvia Constitutional Court, Case Nr. 2010-06-01, 25 November 2010, at [http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/01/2010-06-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/01/2010-06-01_Spriedums_ENG.pdf).

<sup>291</sup> Republic of Latvia Ombudsman (2015) 'Tiesībsarga piedāvātais likumprojekts "Grozījumi Latvijas Republikas Satversmē"', 28 January 2015.

<sup>292</sup> Republic of Latvia Ombudsman (2015), 'Ombudsman's Office of the Republic of Latvia receives "A" status accreditation', 8 July 2015. Available at: <http://www.tiesibsargs.lv/en/homepage/ombudsmans-office-of-the-republic-of-latvia-receives-a-status-accreditation/>.



e) Grounds covered by the designated body/bodies

According to Article 11(2) of the Law on the Ombudsman, the Ombudsman promotes observance of the principle of equal treatment and the elimination of all kinds of discrimination, without specifying the grounds. The grounds covered in practice include the six grounds in the anti-discrimination directives as well as a range of other grounds, e.g. language, political belief, family status, property status, etc.

Of the six prohibited discrimination grounds under the equality directives, disability has received the greatest attention, predominantly in connection with the monitoring and implementation of the UN CRPD, and particularly concerning accessibility issues. Activities include surveys, research on access to goods and services (healthcare institutions, banks, etc.) and access to the labour market, an annual conference focusing on the issues identified during the specific year, and an annual NGO award for promoting the rights of persons with disabilities. Some research and surveys have also included discrimination on grounds of gender, while the other grounds (race, ethnic origin, religion, age) have received very limited attention. The Ombudsman's own stance toward certain minority groups, e.g. sexual minorities has been, on occasions, perceived as controversial, generating a lack of trust in the Ombudsman.

f) Competences of the designated body/bodies – and their independent and effective exercise

i) Independent assistance to victims

In Latvia, the Ombudsman's Office does have the competence to provide independent assistance to victims.

The remit of the Ombudsman includes promoting the protection of the rights and lawful interests of individuals; promoting compliance with the principles of equal treatment and the prevention of any kind of discrimination, including in the private sphere; evaluating and promoting compliance with the principles of good administration in the state administration; detecting deficiencies in the legislation and its application regarding issues related to the observance of human rights and the principle of good administration, as well as promoting the rectification of such deficiencies; and promoting public awareness and understanding of human rights (Article 11(5)), of the mechanisms for the protection of such rights and of the activities of the Ombudsman.

According to Article 12 of the Law on the Ombudsman, the Ombudsman shall:

- 1) accept and examine the submissions, complaints and proposals of private individuals;
- 2) initiate a verification procedure for the clarification of circumstances;
- 3) request that institutions, within the scope of their competence and within the time limits provided for by the law, clarify the necessary circumstances of the matter and inform the Ombudsman thereof;
- 4) upon examination of the verification procedure or after the termination thereof, provide the institution with (non-binding) recommendations and opinions regarding the lawfulness and effectiveness of their activities, as well as compliance with the principle of good administration;
- 5) in accordance with the procedures specified by this Law, resolve disputes between private individuals and institutions, as well as disputes in respect of human rights between private individuals;
- 6) facilitate conciliation between the parties to the dispute;

- 7) in resolving disputes in respect of human rights issues, provide opinions and recommendations to private individuals regarding the prevention of human rights violations; and
- 8) provide persons with consultations regarding human rights issues.

In particular, the Ombudsman may, upon termination of a verification procedure and upon establishment of a violation, defend the rights and interests of a private individual in an administrative court, if this is necessary for the public interest (Article 13(9)). Furthermore – and of direct relevance to discrimination cases – the Ombudsman may, upon termination of a verification procedure and the establishment of a violation, apply to a court in such civil cases where the nature of the action is related to a violation of the prohibition of differential treatment (Article 13(10)). The Ombudsman can initiate a verification procedure – not only in response to a complaint submitted to him, but also on his own initiative.

- Independence

Assistance to victims is exercised in an independent manner in practice.

- Effectiveness

The Ombudsman's role in assisting victims cannot be considered effective as the Ombudsman has the right rather than a duty to represent victims of discrimination in court.<sup>293</sup> There also seems to be no consistent follow-up to the discrimination cases and there is very limited public information about the outcome of the cases. The response to discrimination cases by the Office is reactive - it is very rare for the Ombudsman to pro-actively start a verification case on its own initiative.

- Resources

There is no separate budget line for the equality mandate and therefore there is no information about resources relating to assistance to victims.

## ii) Independent surveys and reports

In Latvia, the Ombudsman's Office does have the competence to conduct independent surveys and publish independent reports.

- Independence

According to Article 12(10) of the law, the Ombudsman shall conduct research and analyse the situation in the field of human rights, as well as provide opinions regarding human rights issues. In his activities, the Ombudsman is independent and is governed only by law. The Ombudsman conducts independent surveys and reports in an independent manner in practice.

- Effectiveness

Surveys in relation to the implementation of UN CRPD are conducted on a different theme on an annual basis. They can be considered effective as they address disability issues consistently. There are a limited number of

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<sup>293</sup> The Ombudsman has not represented a victim of discrimination in court in any area since 2007. The current Ombudsman has claimed that the emphasis is placed on mediation. Nevertheless, there are no data to confirm that.

surveys and reports on other prohibited grounds of discrimination (mainly gender). The effectiveness of the reports varies.

From 2007 to 2010, there were no surveys organised by the Ombudsman even in the initial period when the allocated budget was significant. The Ombudsman conducted a survey on the prevalence of discrimination in employment in October 2011, a survey on public awareness of fundamental rights in 2012, and a study of perceptions of discrimination as part of a wider survey on awareness of human rights and healthcare in 2013.

Since 2015, the Ombudsman's Office has published several surveys relating to different issues under the UN CRPD. In November 2015, it published the findings of a survey on the implementation of the UN CRPD.<sup>294</sup> The survey, conducted in 2014, included persons with disabilities (266), members of the general public (1 033), desk research and responses from 119 municipalities. It covered a wide range of issues (public attitudes towards persons with disabilities, state/municipal support, awareness of avenues of redress in cases of discrimination, participation in public life, assessment of quality of life, access to information, environment accessibility, etc.<sup>295</sup>

In the survey of persons with disabilities, if faced with discrimination, 29 % would be aware of where to turn to for help, while 71 % are not aware. If faced with discrimination, 39 % of respondents would turn to family members, 33 % to NGOs, 26 % to the Ombudsman's office, 19 % to the State Labour Inspectorate, 18 % to the Health Inspectorate, 18 % to the media, 18 % to the police, 16 % to the Consumer Rights Protection Centre, and 10 % would take the matter to court.

From June to October 2016, the Ombudsman, in cooperation with the NGO Apeirons, conducted a study on 'Access to Higher Education by Persons with Disabilities'.<sup>296</sup> The aim of the study was to assess the real situation and opinions of people with disabilities about access to higher education in Latvia.<sup>297</sup> According to the survey, 22.5 % of persons with disabilities said that teaching materials were not available in alternative forms (adjusted for the needs of persons with disabilities); 21.6 % said that higher education establishments do not ensure environmental

<sup>294</sup> According to the findings, 21.1 % of respondents perceive discriminatory attitudes on the part of state institutions, 18.8 % find such attitudes among municipal institutions and public transport drivers, 17.3 % encounter them among the surrounding community, 16.9 % in the workplace and healthcare institutions, 13.5 % from public utility providers and 10.9 % by law enforcement and educational establishments. The survey also found that 79 % of Latvian residents condemn discriminatory attitudes towards persons with disabilities, and 14 % tend not to support such attitudes. At the same time, the highest figures on social distance among people in Latvia are towards people with disabilities as work colleagues or classmates. 60 % of respondents would feel discomfort if working or studying with persons with psychosocial disabilities, 54 % express discomfort with persons with intellectual disabilities, and 20 % do so with persons with other forms of disabilities. 46% of respondents would feel discomfort in relation to people with psychosocial disabilities, 34 % with people with intellectual disabilities, and 10 % with having people with other forms of disabilities as neighbours.

<sup>295</sup> Ombudsman (2015), Materials from the 'Aspects of the Implementation of UN Conventions of the Rights of Persons with Disabilities in Latvia' conference, available in Latvian at <http://www.tiesibsargs.lv/sakumlapa/konferences-ano-konvencijas-par-personu-ar-invaliditati-tiesibam-aspekti-latvija-materiali>.

<sup>296</sup> Ombudsman's Office (2016) 'Accessibility of Higher Education for Persons with Disability' (*Augstākās izglītības pieejamība personām ar invaliditāti*). Presentation during the conference on 6 December 2016, in Latvian at [http://www.tiesibsargs.lv/files/content/Konference\\_Izglitibas\\_pieejamiba\\_2016/I\\_sesija\\_Tiesibsarga\\_monitors\\_Anete\\_Ilves.pdf](http://www.tiesibsargs.lv/files/content/Konference_Izglitibas_pieejamiba_2016/I_sesija_Tiesibsarga_monitors_Anete_Ilves.pdf).

<sup>297</sup> The survey involved 446 people with disabilities as participants and 46 higher educational establishments and 164 buildings, libraries and student dormitories of higher educational establishments were inspected.

accessibility; and 8.1 % said that environmental accessibility is not ensured in libraries. Results of the higher education establishments' survey showed that 77 % have improved their accessibility on their own initiative. The monitoring of buildings identified that 43 % are not accessible to persons with physical disabilities while 21 % are partially accessible and that 2 % are not accessible to persons with visual impairment while 94 % are partially accessible. The study also identified that access to some buildings is not in line with the relevant construction requirements, e.g. the wrong construction of wheelchair ramps, insufficient marking of stairs, touch buttons in elevators.<sup>298</sup>

In 2017, the Ombudsman conducted a survey of employers and their experiences in employing persons with disabilities.

In 2012, the Ombudsman published research on the observance of the prohibition of discrimination towards young mothers in employment.<sup>299</sup> There have been no reports on discrimination on grounds of sexual orientation, age, or other aspects of discrimination in the last decade. In 2016, the Office of the Ombudsman published research findings on 'Practical Problems Concerning the Identification of Hate Speech and Hate Crimes in Latvia'. The aim of the research was to assess the effectiveness of the legal framework (Criminal Law) in Latvia in cases of hate crimes/speech, and, if necessary, to improve legal regulations and provide recommendations to the law enforcement and judiciary on addressing any shortcomings.<sup>300</sup> In 2017, the Office submitted a report on the activities of Ombudsman in monitoring the implementation of the UN CRPD 2010-2016<sup>301</sup> and an alternative report on the initial report on the implementation of the UN CRPD by Latvia.<sup>302</sup>

- Resources

There is no separate budget line for the equality mandate. Hence, there is no information about the resources allocated to surveys and reports on non-discrimination.

iii) Independent recommendations

In Latvia, the Ombudsman's Office does have the competence to issue independent recommendations on discrimination issues.

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<sup>298</sup> Ombudsman's Office (2016) 'Accessibility of Higher Education for Persons with Disability' (*Augstākās izglītības pieejamība personām ar invaliditāti*). Presentation during the conference on 6 December 2016.

<sup>299</sup> Ombudsman's Office (Tiesībsargs) (2012), 'Diskriminācijas aizlieguma ievērošana darba tiesiskajās attiecībās pret jaunajām māmiņām' (Observing the Prohibition of Discrimination against Young Mothers in Employment Relations), available in Latvian at [http://www.tiesibsargs.lv/img/content/maminas\\_petijuma\\_rezultati\\_apkopojums\\_2013.pdf](http://www.tiesibsargs.lv/img/content/maminas_petijuma_rezultati_apkopojums_2013.pdf).

<sup>300</sup> Ombudsman's Office (Tiesībsargs) (2016), *Problematic Aspects in the Identification and Investigation of Hate Speech and Hate Crimes in the Republic of Latvia*. Available at: [http://www.tiesibsargs.lv/uploads/content/naida\\_noziegumu\\_un\\_naida\\_runas\\_izmeklesana\\_lv\\_2016\\_14860\\_44199.pdf](http://www.tiesibsargs.lv/uploads/content/naida_noziegumu_un_naida_runas_izmeklesana_lv_2016_14860_44199.pdf).

<sup>301</sup> Ombudsman's Office (Tiesībsargs) (2017), *Pārskats par Latvijas Republikas Tiesībsarga paveikto, monitorējot ANO konvencijas par personu ar invaliditāti tiesībām ieviešanu 2010.-2016.gadā*, p. 69, in Latvian at [http://www.tiesibsargs.lv/uploads/content/legacy/ano\\_konvencijas\\_monitorings\\_2010\\_2016\\_1502967444.pdf](http://www.tiesibsargs.lv/uploads/content/legacy/ano_konvencijas_monitorings_2010_2016_1502967444.pdf).

<sup>302</sup> Ombudsman's Office (2017), 'Alternative Report concerning the Initial Country Report on the Implementation by Latvia of the UN CRPD', available at: [http://www.tiesibsargs.lv/uploads/content/jaunumi/zinojums\\_ano\\_konvencija\\_1489500353.pdf](http://www.tiesibsargs.lv/uploads/content/jaunumi/zinojums_ano_konvencija_1489500353.pdf).

- Independence

The recommendations issued by the Ombudsman are independent. Recommendations can generally be seen in the Ombudsman's public opinions on specific cases and there is no evidence of interference with the function. Recommendations may be addressed to state and municipal bodies, and in some cases to private actors.

- Effectiveness

According to the Ombudsman, in 2016, 67 % of the Office's recommendations were fulfilled,<sup>303</sup> however there is no breakdown of data across different mandates. The state budget chart does not specify who the recommendations were addressed to or which areas they covered. There is limited public information about the content of recommendations concerning discrimination and the extent to which they are followed-up. Descriptions of isolated individual cases are included in the annual report, which does not provide an overall picture about recommendations in the exercise of the non-discrimination mandate. Thus, the effectiveness of the scale/level and quality of implementation of activities under this competence is questionable.

- Resources

There is no separate budget line for the equality mandate.

iv) Other competences

According to Article 11(5) of the Law on the Ombudsman, the ombudsman is tasked with the promotion of public awareness and understanding of human rights, the mechanisms for the protection of such rights and the activities of the Ombudsman. In 2012, in co-operation with the NGO Apeirons (working with people with disabilities) the Ombudsman conducted an awareness raising campaign called, 'There could be work', aimed at highlighting the information to include in a CV and the mistakes made by job applicants. The campaign included a survey, posters and information about the Ombudsman's role in relation to discrimination.<sup>304</sup>

v) Positive duties

The Law on the Ombudsman does not explicitly mention positive duties in relation to the equality mandate, but they can be subsumed under Article 11(2) of the law, on the functions of the Ombudsman, which includes, 'promotion of the compliance with the principles of equal treatment and prevention of any kind of discrimination.' Other than surveys on the monitoring of UN CRPD, the Ombudsman does not play an active role in checking the promotion of the compliance with the principles of equal treatment and prevention of any kind of discrimination.

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<sup>303</sup> Ministry of Finance (2017), 'Budget of the Office of the Ombudsman: Protection of human rights of private individuals', in Latvian at [http://fm.gov.lv/lv/sadala/valsts\\_budzets/valsts\\_budzeta\\_vizualizacija/\\_budzets2017/tiesibsarga\\_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/](http://fm.gov.lv/lv/sadala/valsts_budzets/valsts_budzeta_vizualizacija/_budzets2017/tiesibsarga_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/).

<sup>304</sup> [http://www.tiesibsargs.lv/uploads/content/legacy/Te\\_vareja\\_but\\_darbs\\_plakati%20%281%29.pdf](http://www.tiesibsargs.lv/uploads/content/legacy/Te_vareja_but_darbs_plakati%20%281%29.pdf).

g) Legal standing of the designated body/bodies

In Latvia, the Ombudsman has legal authority to bring discrimination complaints (on behalf of identified victim(s)) or to intervene in legal cases concerning discrimination).

According to Article 12 of the Law on the Ombudsman, the Ombudsman may, upon termination of a verification procedure and upon establishment of a violation, defend the rights and interests of a private individual in an administrative court, if this is necessary for the public interest. Upon termination of a verification procedure and the establishment of a violation, the Ombudsman may also apply to a court in civil cases where the nature of the action is related to a violation of the prohibition of differential treatment. Thus, the Ombudsman has a right, rather than a duty to bring discrimination complaints before the court. The Ombudsman has not brought any discrimination cases before the court, although it has facilitated conciliation in two gender discrimination cases. The only discrimination case brought before the court on behalf of a victim (a Roma woman), was brought by its predecessor, the National Human Rights Office, in 2006.

In Latvia, the Ombudsman cannot bring discrimination complaints (on behalf of non-identified victims) to court.

In Latvia, the Ombudsman has the right to bring discrimination complaints *ex officio* to court.

The Ombudsman has the right to go to court, however this may be problematic in practice, as turning to the Ombudsman does not defer the procedural deadline, which in discrimination cases is three months. Therefore, victims frequently bring discrimination complaints to the court and the Ombudsman in parallel.

In Latvia, the Ombudsman can intervene in legal cases concerning discrimination, such as *amicus curiae*, but only in administrative cases and the initiative must come from the Ombudsman's Office. According to Article 183 of the Administrative Offences Code, an association of persons, which is a recognised representative of interests in a specific field and can be expected to deliver competent opinions, may request that it be allowed to submit in writing its opinion on facts or rights in a specific field to the court. If the court deems that the opinion of the association of persons will help the court adopt an objective decision in the case, it determines the questions on which the association can submit its opinion. No *amicus curiae* is provided for in the civil procedure.

h) Quasi-judicial competences

In Latvia, the Ombudsman is not a quasi-judicial institution.

The functioning of the Ombudsman is based on the idea of authority and persuasion, not enforcement. Its decisions are only recommendations; it cannot impose any sanctions. The law provides for no appeal concerning the decisions of the Ombudsman on their merits, and the 2007 judgment of the Administrative Affairs Department of the Supreme Court Senate confirmed that the actions of the Ombudsman cannot be appealed in court.

In 2009, the first Ombudsman himself publicly admitted that 'local authorities, ministries and other institutions tend to ignore the opinion of the Ombudsman.'<sup>305</sup> However, according to information provided in the Annual State Budget Law concerning the indicators related to the results of the work of the Ombudsman, in 2015, 67.6 % of the Ombudsman's recommendations were followed. The projected figures for 2016 and 2017 were 70 % and

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<sup>305</sup> Luckāns, Uldis. Apsītis: Pašvaldības un ministrijas mēdz ignorēt tiesībsarga viedoklis [Apsītis: Local Governments and Ministries Tend to Ignore Opinion of the Ombudsman]. *Leta*, 27.05.2009, at <http://www.apollo.lv/portal/news/articles/168321>.

72 % respectively.<sup>306</sup> There is no detailed data, broken down by mandate, on the extent to which the Ombudsman's recommendations are followed, including in discrimination cases.

Turning to the Ombudsman does not preclude a person from subsequently – or simultaneously – bringing a court case. There is no law to preclude this, although it is difficult to imagine it, as the Ombudsman is perceived more as an alternative to the court, and is used by people who cannot afford to bring a court case.

Although it would normally mean that the time limits for bringing the case would be missed,<sup>307</sup> in the *Kozlovskā* case<sup>308</sup> the court held that, in cases where a person first turned to the former National Human Rights Office, and the time limit has been missed for this reason, the time limit provision has to be interpreted broadly so as not to deny the person the protection of their rights. The finding of the Ombudsman is not binding on the court, so the court is free to follow or not follow it, if any of the parties brings it to the court's notice.

However, since 2014, the Ombudsman can sanction individuals and legal persons for not providing information or for providing false information. According to Section 175.<sup>10</sup> of the Administrative Offences Code in the case of not providing information to the Ombudsman within a specified time period and in the specified amount of a request, as well as in the case of the provision of false information, a fine will be imposed on natural persons and legal persons to the amount of up to EUR 300. There is no public information on whether any individual or legal entity has ever been sanctioned in this regard.

#### i) Registration by the body/bodies of complaints and decisions

In Latvia, the Ombudsman's Office registers the number of complaints and decisions (initiated verification (investigation) cases, refusals to initiate an investigation case, closed/completed cases, and consultations). The numbers of initiated investigation cases by ground of discrimination are available only upon request. Except for selected cases, discrimination complaints by field, type of discrimination, outcome, etc. are not available to the public.

In March 2015, the Ombudsman's Office stopped collecting statistics on discrimination. According to the Office, 'considering that violations of the prohibition of discrimination in practice include violations of other rights (from the aspect of civil and political, social, economic, cultural or children rights), the Office does not collect separate statistics about discrimination complaints (those are included in the statistics of the above-mentioned legal departments.)'.<sup>309</sup> However, data on discrimination complaints in 2016 and 2017 (until 31 July) were provided upon request.<sup>310</sup> In the last two years over half of the complaints

<sup>306</sup> Ministry of Finance (2017), 'Budget of the Office of the Ombudsman: Protection of human rights of private individuals', in Latvian at [http://fm.gov.lv/lv/sadalas/valsts\\_budzets/valsts\\_budzeta\\_vizualizacija/\\_budzets2017/tiesibsarga\\_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/](http://fm.gov.lv/lv/sadalas/valsts_budzets/valsts_budzeta_vizualizacija/_budzets2017/tiesibsarga_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/)

<sup>307</sup> Until 2010, the deadline for submission of a discrimination case in court was within one month, since 2010 the deadline is three months.

<sup>308</sup> Jelgava Court (*Jelgavas tiesa*), Case no C 15066406, *S. Kozlovskā v. SIA Palso*, 25.05.2006, available in Latvian at [cilvektiesibas.org.lv/media/attachments/29/01/2013/sk\\_palso.pdf](http://cilvektiesibas.org.lv/media/attachments/29/01/2013/sk_palso.pdf).

<sup>309</sup> Email communication by the Ombudsman's Office to the Latvian Centre for Human Rights on 18 March 2016.

<sup>310</sup> Latvia, Ombudsman's Office (*Tiesībsarga birojs*), Information provided to the LHCR by email on 19.10.2016 and 22.02.2017. In 2016, the Ombudsman's Office received 91 complaints concerning discrimination and legal equality principle. Of those, 48 complaints were on grounds of disability (6 – employment, 8 – environmental accessibility, education - 2 right to property – 3, access to services provided by municipalities/state, access to services provided by the private sector, other – 4, 1 – health, 2 – other); 5 complaints on gender grounds (2 – employment, 2 – access to services by the private sector, 1 – other), 2 complaints on grounds of sexual orientation- access to services provided by the private sector, 2 complaints on grounds of age (1 – employment, 1 – education), 1 complaint on grounds of health (access to services provided by municipal/state services), 8 complaints on grounds of ethnicity (2 employment, 3 – media, 1 –



received by the Ombudsman are on grounds of disability, allegedly due to the office's more active co-operation with NGOs focusing on persons with disabilities and monitoring of the implementation of the UN Convention on the Rights of Persons with Disabilities. There is little information available on the outcome of the complaints, including in the annual reports.

In 2016, the Ombudsman's Office received 91 complaints alleging discrimination on different grounds and violation of legal equality.<sup>311</sup> Of those, 48 were on the ground of disability: in employment (6); concerning environmental accessibility (8); access to services (22); education (2); housing (3); and other areas (7). Ten complaints were on the ground of ethnic origin: in employment (2); education (1); during court hearings (1); access to services (1); and other areas (5). Five complaints were about alleged discrimination on the ground of gender: in employment (2); access to services (2); and other areas (1). Two complaints were on the ground of sexual orientation in access to services and two complaints were on the ground of age in employment and education. Additionally, there were 24 complaints on the violation of legal equality in employment, education, access to services and two complaints on other grounds. The Ombudsman's Office initiated six verification cases. In one case, violation of prohibition of discrimination was found on the ground of sexual orientation. Three cases (two on the violation of prohibition of discrimination on the ground of disability and one of violation of legal equality in employment) were under investigation.

In 2017 (until 31 July), the Ombudsman's Office had received 24 complaints alleging discrimination.<sup>312</sup>

Data provided to international organisations (for example, in the Latvia country report submitted to the UN CERD in October 2017), show that in 2013, the Ombudsman's Office received a total of 111 submissions in the area of discrimination (on all grounds), 87 submissions in 2014, 82 submissions in 2015, and 86 submissions in 2016.<sup>313</sup> Thus, data on complaints provided to different organisations tend to differ and are not fully reliable, particularly after the closure of the Ombudsman's legal equality department. It is not always entirely clear which verification (investigation) cases have been opened on the Ombudsman's initiative and which have been opened in response to a complaint.

#### j) Planning

The Ombudsman's Office has a strategic plan. The first such mid-term strategy was published in 2011, and covered the period 2011-2013, the second covered the period 2014-2016, and the third covers a five-year period: 2017-2021. The mid-term strategy is phrased in general terms and it prioritises areas of work and projected results without providing any details.

In Section III of the 13-page mid-term strategy for 2017-2021, there is an item under the heading 'Observation of Principle of Equal Treatment and Prevention of All Kinds of Discrimination':<sup>314</sup>

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access to services provided by a club (denial of entry), 1- other); 19 complaints concerning legal equality (13 – employment, 3 – education, 3 – access to municipal/state provided services). In 2016, six verification cases were opened (in one case discrimination on grounds of sexual discrimination was established, in two cases violation of legal equality principle was established, in three cases there was no information about the outcome).

<sup>311</sup> Ombudsman's Office (*Tiesībsarga birojs*), Information provided to the LHCR by email on 19.10.2016 and 22.02.2017.

<sup>312</sup> Information for the entirety of 2017 is still pending.

<sup>313</sup> Latvia (2017), 'Annex no. 2' to the *Combined sixth to twelfth periodic reports submitted by Latvia under article 9 of the Convention*, p.21, 12 October 2017 available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fADR%2fLVA%2f29201&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fADR%2fLVA%2f29201&Lang=en).

<sup>314</sup> Ombudsman of the Republic of Latvia (2017) 'Strategy of the Ombudsman of the Republic of Latvia for 2017-2021', 15 February 2017, p. 10.



'Monitoring of the implementation of the UN Convention on the Rights of Persons with Disabilities/Rights of Persons with Disabilities: access to higher education, access to public transport, facilitating access to labour market; monitoring of introduction of de-institutionalisation process; restrictions on the rights of persons with disabilities to conclude transactions; access to cultural events; promoting positive attitudes.'

The strategy also mentions informing the public and raising public awareness about tolerance and non-discrimination (tolerance towards the other, tolerance towards persons in need of international protection).

There is an annual work plan, but it is not publicly available.

The Ombudsman's Office publishes an annual report. It must report to the Parliament about its activities once a year (Article 15(1)). The level of the debate varies.

There has been no recent evaluation of the implementation of the strategic plan.

In 2011, the first strategic plan covering the period 2011-2013 was published for the first time. In 2011, there were attempts to involve NGOs in the planning process, in subsequent years there has been no organised involvement of stakeholders in the process.

#### k) Stakeholder engagement

The Ombudsman can establish advisory bodies as well as working groups for the development of different projects or the preparation of issues (Article 14(1)). The composition of the advisory bodies and working groups and their regulations is approved by the Ombudsman (Article 14(2)). Four advisory bodies<sup>315</sup> were created between 2011 and 2017. Apart from the Roma Advisory Council, which was set up in 2013, no other advisory bodies have been established to explicitly address non-discrimination issues during the last seven years.

#### Civil society associations

The Ombudsman engages with NGOs working with people with disabilities to facilitate the implementation of UN CRPD, particularly on accessibility issues. He has launched an annual NGO award in seven categories to recognise the work of NGOs that have promoted access to employment, education, services, digital integration or taken a stand for people with disabilities.<sup>316</sup>

At the end of 2017, the Ombudsman's Office issued guidelines to employers on reasonable accommodation for people with disabilities (with mobility disability, with vision or hearing impairments (total and partial loss), and autism spectrum disorder).<sup>317</sup> The guidelines include reasonable accommodation in offices, in the area of services and commerce, in factories, agriculture, forestry and fisheries, and information on the most popular professions for employees with the different types of disabilities. The guidelines build on contributions by five Latvian NGOs working with people with specific disabilities.

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<sup>315</sup> The Advisory Council on Legal Regulation on Partnership was set up in 2011. The end-result of the working group was that the Ombudsman did not support the draft Law on Registered Partnership developed by the LGBT NGO Mozaika, but proposed amendments to selected laws instead. The Ombudsman's initiative was not supported by the Government. The Advisory Council on Access to Education (set up in 2011) was tasked with examining what constituted the concept of free education and what has to be covered by the state, municipality and parents. The Advisory Council on Healthcare was set up in 2013.

<sup>316</sup> Ombudsman (*Tiesībsargs*) (2017), 'NVO konkurss "Gada balva personu ar invaliditāti atbalstam"', at <http://www.tiesibsargs.lv/news/lv/nvo-konkurss-gada-balva-personu-ar-invaliditati-atbalstam>.

<sup>317</sup> Ombudsman's Office (*Tiesībsargs*) (2017), *Pielāgota darba vide darbiniekiem ar invaliditāti. Informatīvais materiāls darba devējiem*, p. 133, in Latvian at [http://www.tiesibsargs.lv/uploads/content/publikacijas/vadlinijas\\_dd\\_vides\\_pielagosana\\_1515490591.pdf](http://www.tiesibsargs.lv/uploads/content/publikacijas/vadlinijas_dd_vides_pielagosana_1515490591.pdf).

A Roma Advisory Council was set up in 2013, however, there is no public record of its activities apart from regulations, and the council seems to have ceased its activities. In the last five years, there has been no other co-operation with civil society organisations working on non-discrimination issues.

#### Business/employer/service provider networks and organisations

The Ombudsman has tried to raise awareness on UN CRPD requirements and has undertaken surveys among employers about their experiences and readiness to employ people with disabilities. Guidelines for employers on reasonable accommodation were developed in 2017. It is difficult to evaluate to what extent the issues that are the focus of a specific year at an annual conference are followed up on in subsequent years and whether there is regular work with business/employer/service provider networks and organisations. There is no regular co-operation or formal procedures for business/employer/service provider network and other organisation engagement in relation to race, ethnic origin, age, religious or other belief, gender or sexual orientation.

#### Public bodies

In recent years, the Ombudsman's Office has left a significant number of standing or ad hoc working groups that target specific minority groups (Roma, third country nationals, etc.) under the auspices of different ministries, as well as a leading public agency, the Society Integration Fund, which also administers EU project funds related to the promotion of diversity and combatting non-discrimination. The explanation for this is that (allegedly) the presence of the representative of the Ombudsman's Office jeopardises the independence of the Ombudsman. However, the Office continues to be represented on several inter-ministerial working groups, although there are no formal procedures for public body engagement.

#### Local government entities

The Ombudsman has tried to raise awareness on UN CRPD requirements among local government entities by undertaking a survey in 2016 and presenting findings in an annual conference. Other prohibited discrimination grounds have not received attention in work with municipalities. There are no formal procedures for local government engagement.

#### Trade unions or employee associations

There is no public record of the Ombudsman's engagement with trade union or employee associations on non-discrimination issues.

Since the ratification of the UN CRPD and the subsequent designation of the Ombudsman's Office as the entity responsible for monitoring the UN CRPD in 2012, close co-operation has developed with civil society organisations working with disability issues. There have also been awareness-raising activities among several stakeholders, such as municipalities and employers concerning UN CRPD requirements. Nevertheless, that has not yet led to regular co-operation with employer/service provider organisations. Co-operation with different stakeholders on non-discrimination issues in relation to other prohibited grounds, e.g. age, race/ethnicity, religious or other belief, sexual orientation are usually unique and predominantly reactive events. There are no formal procedures for local government, trade union or public body engagement.

#### I) Accessibility

The Ombudsman's Office does have an accessible and publicly visible office in the capital, Riga.

The Ombudsman's Office does not have local or regional offices.

The Ombudsman's Office does conduct occasional outreach activities to local areas or communities, but they are rather rare and not systematic. It provides legal consultations, including on non-discrimination. According to the Office's website, in 2017, there were only two such visits to cities in Latvia (other than Riga).

The Ombudsman's Office does have procedures in place to identify and respond to the access needs of specific complainants

It is accessible to wheelchair users and individuals with prams by the use of a call button.<sup>318</sup> The Office's webpage has sections in three languages – Latvian, English and Russian. There is 'easy to read' information about the Ombudsman. The website is designed to be accessible for persons with visual disabilities. Information (particularly topical information) in Russian, a language spoken by more than a third of Latvia's population is limited, and no information in Russian was published from May 2014 to June 2017.<sup>319</sup> Consultations are provided in all the three languages. It does not collect data on complaints by language. There is no information in Braille.

The Ombudsman's Office generally accommodates the access needs of specific complainants. Due to Latvia's restrictive language legislation, written information may be less easily accessible in languages other than Latvian, however, oral communication is ensured in Russian, which is the second most widely spoken language in Latvia.

#### m) Roma and Travellers

In May 2011, a person was hired by the Ombudsman's Office to specialise on Roma issues. The individual was tasked with the promotion of Roma integration, organising the office's activities in the realm of non-discrimination and consulting Roma on various issues, including facilitating Roma access to law enforcement institutions.<sup>320</sup> As of 1 January 2017, there is no longer a Roma consultant post.

The Advisory Council on Roma Issues (*Romu konsultatīvā padome*) was established under the auspices of the Ombudsman's Office in 2013.<sup>321</sup> The main aims of the Council are to assess activities and measures undertaken in 2007-2012 aimed at preventing discrimination, reducing exclusion of Roma, assessing measures undertaken in 2012-2020 in education, employment, health care, access to housing, to develop and submit to the Ombudsman proposals aimed at improving the economic situation of Roma and the rest of society, to develop and submit proposals about necessary amendments to legislative acts to prevent Roma discrimination and exclusion and to facilitate equal participation by Roma in economic life.

The meetings of the council have been closed, and there is little public information about its activities. The council was no longer operational in 2017.

In 2012, the Ombudsman criticised the national authorities on the basis that EU funding and funding from the state budget that had been allocated for the improvement of the situation of the Roma minority and their integration from 2007 to 2012 had not been spent 'purposefully and effectively'.<sup>322</sup> The Ombudsman made recommendations to 1) create an effective control mechanism concerning the allocation of funding, 2) appoint a responsible

<sup>318</sup> <http://www.tiesibsargs.lv/lv/pages/kontaktinformacija>.

<sup>319</sup> <http://www.tiesibsargs.lv/ru>.

<sup>320</sup> Information provided by the consultant on Roma issues at the Ombudsman's Office on 08.08.2011.

<sup>321</sup> The Ministry of Culture, Roma (*Romi*) [www.km.gov.lv/lv/ministrija/romi.html](http://www.km.gov.lv/lv/ministrija/romi.html).

<sup>322</sup> Ombudsman (2012), *Tiesībsarga vēstule par Eiropas Savienības finanšu instrumentu un valsts budžeta līdzekļu izlietojumu romu integrācijai* (30.08.2012). Available in Latvian: [http://www.tiesibsargs.lv/img/content/atzinumi/romi\\_es\\_lidzekli\\_romu\\_kopienai\\_vestule\\_saeimai\\_mk.pdf](http://www.tiesibsargs.lv/img/content/atzinumi/romi_es_lidzekli_romu_kopienai_vestule_saeimai_mk.pdf).

institution that would evaluate and harmonise the compliance of each project with the aims of EU and national policy planning documents, and 3) provide information to the Ombudsman about the planned projects for the purposes of monitoring. The Ombudsman also recommends engaging Roma in project design and implementation.

At the same time, the Advisory Committee of the Council of Europe noted in its Second Opinion in 2014 that, despite expressing his concern about the situation of Roma in Latvia who continue to face discrimination in many spheres of life, the Ombudsman is considered to have made only limited concrete contributions to promoting their full and effective equality in society.<sup>323</sup>

On certain occasions, the Ombudsman has voiced support for controversial ideas, e.g. the creation of Roma villages, which was proposed by the Roma leader in Latvia<sup>324</sup> although criticised by other Romani representatives.<sup>325</sup>

There have been no activities by the Ombudsman specifically related to Roma issues in 2015–2017.

The Ombudsman deals with the discrimination of migrants in practice. It does not treat migrants as a priority issue. In 2017, the Office received a complaint about an advertisement that indicated that double rent would be required from Indian and Pakistani students for renting a room. The Ombudsman turned to the administrator of the site and the advert was removed.<sup>326</sup>

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<sup>323</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities (2014), *Second Opinion on Latvia*, adopted on 18.06.2013, paragraph 35, p.12. ACFC/OP/II(2013)001, [https://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_OP\\_Latvia\\_en.pdf](https://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Latvia_en.pdf).

<sup>324</sup> Romu centrs (Roma Cultural Centre) (2014), '21st Century Tabor' (21.gadsimta tabors), [http://www.romucentrs.lv/uploads/3/8/9/1/38919243/ciemats\\_lv\\_pdf.pdf](http://www.romucentrs.lv/uploads/3/8/9/1/38919243/ciemats_lv_pdf.pdf).

<sup>325</sup> LSM.LV (2013), 'Would Gypsies in Latvia Want to Live in Separate Villages Built Exclusively for Them?', 19 December 2013. <http://www.lsm.lv/lv/raksts/latvija/zinas/vai-chigani-latvija-gribetu-dziivot-atseviskhjos-vinjiem-buvetos.a72611/>.

<sup>326</sup> Ombudsman (*Tiesībsargs*) (2017), Email to LCHR on 7 March, 2017.

## 8 IMPLEMENTATION ISSUES

### 8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

There has been limited dissemination of information about legal protection against discrimination in the last decade by state bodies, including the Ombudsman's Office, the Ministry of Culture and the Ministry of Welfare. Although the State Labour Inspectorate has continued to organise informative seminars on the Labour Law, these have concentrated on issues of non-discrimination in only a limited way.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

Latvia provides training on discrimination and tolerance-related issues for different target groups with the involvement of NGOs. Thus, the Latvian Centre for Human Rights, within the framework of different projects, has organised over 35 training seminars on non-discrimination and diversity management of various durations (8 to 30 hours) for NGOs, trade union representatives, police officers, judges, health and social workers, civil servants and journalism students. The LCHR has published different informative brochures and reports on non-discrimination, and has created an anti-discrimination database on its website. This is the largest online resource in Latvia for policy documents, anti-discrimination legislation, court cases, surveys, reports and publications.<sup>327</sup>

Since 2014, a public agency, the Society Integration Fund has conducted a range of projects in cooperation with NGOs aimed at promoting diversity and combating discrimination. The projects have been implemented through the PROGRESS 2007-2013 programme of the European Union and have included training of judges, a comprehensive Roma survey, a poster campaign and video spots challenging discrimination on different grounds.<sup>328</sup>

In 2017, SIF continued the implementation of the project 'Diversity Promotion', funded by the European social fund. Two research reports were published aimed at developing awareness-raising activities about social inclusion and discrimination prevention, provision of support services to persons at risk of social exclusion and discrimination, and the development of an anti-discrimination communication campaign.<sup>329</sup> In November 2017, in co-operation with several partners, SIF started a social campaign against discrimination in the labour market. The aim of the campaign is to urge Latvian employers to select employees according to their professional abilities and not according to age, ethnic affiliation, gender, sexual orientation, and other criteria not connected to knowledge and experience.<sup>330</sup>

<sup>327</sup> See Latvian Centre for Human Rights [www.cilvektiesibas.org.lv](http://www.cilvektiesibas.org.lv).

<sup>328</sup> Society Integration Fund (2015), 'Different people. Different Experience. One Latvia II', at [http://www.sif.gov.lv/index.php?searchword=Progress&ordering=&searchphrase=all&Itemid=198&option=com\\_search&lang=lv](http://www.sif.gov.lv/index.php?searchword=Progress&ordering=&searchphrase=all&Itemid=198&option=com_search&lang=lv).

<sup>329</sup> SIA "Safegē Baltija", SIA "Comperio", SIA "Prospero" (2017), *Izpētes ziņojums par pašreizējo sabiedrības izpratnes un informētības līmeni un efektīvākajiem informācijas sniegšanas mehānismiem*, available in Latvian at: [http://www.sif.gov.lv/images/files/nodevumi/ESF\\_Da%C5%BE%C4%81d%C4%ABbas/Izpetes\\_zinojums\\_p\\_ar\\_sabiedribu.pdf](http://www.sif.gov.lv/images/files/nodevumi/ESF_Da%C5%BE%C4%81d%C4%ABbas/Izpetes_zinojums_p_ar_sabiedribu.pdf) (last accessed 4 January 2018).

<sup>330</sup> Society Integration Fund (2017), 'Study: One-half of employers are not ready to employ people with chronic illness or disability and former prisoners', 15.11.2017, at [http://www.sif.gov.lv/index.php?option=com\\_content&view=article&id=10326%3APetijums-Puse-darba-deveju-nav-qatavi-nodarbinat-cilvekus-ar-hroniskam-slimibam-vai-invaliditati-un-bijusos-ieslodzitos&catid=14%3AJaunumi&Itemid=186&lang=lv](http://www.sif.gov.lv/index.php?option=com_content&view=article&id=10326%3APetijums-Puse-darba-deveju-nav-qatavi-nodarbinat-cilvekus-ar-hroniskam-slimibam-vai-invaliditati-un-bijusos-ieslodzitos&catid=14%3AJaunumi&Itemid=186&lang=lv).

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Social dialogue in Latvia is conducted within the framework of the National Tripartite Cooperation Council (further - 'the NTCC').<sup>331</sup> The NTCC is made up of an equal number of representatives from the Government, the Latvian Confederation of Employers and the Latvian Union of the Free Trade Unions. The NTCC examines drafts of framework documents, programmes, laws and other legal acts and submits its proposals to the relevant ministries in relation to a wide range of social and economic issues. Four sub-councils have been established on the following issues: social insurance, professional education and employment, healthcare and labour issues. The last of these, the Labour Tripartite Cooperation Sub-Council, deals with issues of employment law, labour protection and equal opportunities. Issues of discrimination have been discussed in the work of the sub-councils and the NTCC to a limited extent only, i.e. only as far as they relate to employment law, and mostly in relation to gender-based discrimination. Issues of gender-related discrimination have been examined more closely.

Social dialogue concerning discrimination-related issues related to gender-based and disability-based discrimination occurs in those areas where dialogue and cooperation with the relevant NGOs is well established. There has been a Gender Equality Committee since 2002 (earlier it was the Gender Equality Council), and the National Council for the Affairs of Disabled Persons, uniting representatives of NGOs and state institutions, was created under the aegis of the Ministry of Welfare in 1997. The council, among other things, focuses on issues related to the implementation in Latvia of the UN Convention on the Rights of Persons with Disabilities.<sup>332</sup>

- d) Addressing the situation of Roma and Travellers

Roma integration issues were marginally included in the National Identity, Civil Society and Integration Policy Fundamental Principles 2012-2018, which were adopted in October 2011. The Ministry of Culture is responsible for the advancement of Roma issues at a national level. It has set up a Latvian Roma platform to foster co-operation between the Roma community and state and municipal institutions, and social partners to improve participation in and co-ordination and implementation of Roma integration measures at local, regional and national level.<sup>333</sup> The action plan on the Implementation of the Guidelines for 2017–2018, approved on 31 May 2017,<sup>334</sup> sets out the continuation of Roma education quality monitoring, support to Roma teacher assistants and mediators in educational establishments and municipalities, and activities aimed at: the prevention of leaving school early; provision of support measures to Roma youth, women, and Roma NGOs; promotion of tolerance and intercultural dialogue activities that aim to decrease prejudice towards Roma; and further development of the Roma integration platform.

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<sup>331</sup> Latvia, Regulation on the National Tripartite Cooperation Council (*Nacionālās Trīspusējās sadarbības padomes nolikums*), 30.10.1998, available in Latvian at <http://likumi.lv/doc.php?id=50778>.

<sup>332</sup> Ministry of Welfare (2015), 'Meetings with Associations that Represent Persons with Disabilities' <http://www.lm.gov.lv/text/3089>.

<sup>333</sup> Ministry of Culture (Kultūras ministrija), 'Latvian Roma platform' (*Latvijas Romu platforma*), at <https://www.km.gov.lv/lv/integracija-un-sabiedriba/romi/latvijas-romu-platforma>.

<sup>334</sup> Cabinet of Ministers (*Ministru kabinets*) (2017), *Par Nacionālās identitātes, pilsoniskās sabiedrības un integrācijas politikas pamatnostādņu 2012.-2018. gadam īstenošanas plānu 2017.-2018. gadam, 31 May 2017*, available in Latvian at: <https://likumi.lv/ta/id/291179?&search=on> (last accessed 4 January 2018).

## **8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

### **a) Mechanisms**

There is no specific regulation in national law establishing a mechanism that is designed to screen and eventually abolish laws, provisions and regulations that do not comply with the principle of non-discrimination. If it is the legal provision itself that is discriminatory, the person who has suffered from discrimination on the basis of the measure can, by first initiating procedures in the courts of general jurisdiction, submit a constitutional complaint to the Constitutional Court, which may declare null and void the legal provisions that are contrary to provisions of a higher legal force, up to the Constitution. This, however, is a cumbersome procedure, requiring the prior exhaustion of all other remedies. The alternative would be to turn to the Ombudsman's Office, asking it to bring a complaint. However, the Ombudsman can only bring abstract review cases, and since the unconstitutional law usually loses its force only prospectively, the result of the case will be of no avail to the particular complainant. In the case of a concrete review as a result of a constitutional complaint, the Constitutional Court can make, and has made in the past, an exception to allow the author of the complaint to benefit from the positive result of the case.

There does exist a mechanism, however, for ensuring that contracts, collective agreements and internal rules that are incompatible with the principle of equal treatment are abolished – or, more precisely, are recognised by the courts as being void. Article 6 of the Labour Law provides that 'provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment contract and orders of an employer which, contrary to regulatory enactments, erode the legal status of an employee, are void and can be declared as such by courts of general jurisdiction'. According to Article 43(1) of the Civil Procedure Law, claims concerning labour disputes are exempt from judicial costs which mean that the applicant does not have to pay state duty or other costs directly related to the proceedings.

However, this does not include lawyers' fees, although, since the adoption in 2005 of a law to provide for state-paid legal aid, it has become possible to ask for state aid to cover lawyer's fees.

### **b) Rules contrary to the principle of equality**

It is difficult to estimate whether any laws etc. that are contrary to the principle of equality are still in force; at least, there are no apparent cases to indicate this. More often, the laws would not be discriminatory in themselves, but would fail to provide adequate protection against discrimination. In cases of conflict, EU law would take precedence over national law.



## 9 COORDINATION AT NATIONAL LEVEL

Following the transposition of the anti-discrimination directives and since the closure of the Secretariat of the Special Assignments Minister for Integration Affairs (SSAMIA) on 1 January 2009, there has been no national authority coordinating issues regarding anti-discrimination.

The Ministry of Welfare is responsible for issues relating to discrimination in the field of employment relationships, social security, children and family affairs, as well as in relation to equal opportunities regarding disabled persons and gender equality, thus covering the grounds of gender, disability and age.

Tasks and obligations in relation to social integration have been handed over to different ministries, eventually ending up with the Department for Social Integration Affairs within the Ministry of Culture (MoC). The regulations governing the MoC do not explicitly mention anti-discrimination functions, however the competence of the MoC in the realm of social integration and the promotion of civil society also includes a role 'to ensure the observance of the rights of minorities, including Roma, by facilitating the elimination of racial and ethnic discrimination.' The Ombudsman's Office has not assumed a national coordinating role on non-discrimination issues.

There is no national action plan on anti-discrimination or anti-racism, but the Government has adopted several framework documents and action plans for the implementation of the UN Convention on the Rights of Persons with Disabilities and its Additional Protocol. In September 2013, the Government approved the framework document for 2014-2020.<sup>335</sup>

The Framework Document on Guidelines on National Identity, Civil Society and Social Integration Policy 2012-2018<sup>336</sup> includes a brief paragraph on anti-discrimination, citing that an institutional mechanism and an anti-discrimination legislative framework have been developed, while discrimination often remains unrecognised and unpunished. In such a situation, particular groups of the population face a greater risk of suffering discrimination, for example the Roma. There is little case law, and there are no regular surveys or information campaigns which would make this problem more visible in the public consciousness. A positive attitude to diversity should be promoted in society in order to ensure a tolerant and respectful attitude to diversity and those who are different.

The action plan accompanying the guidelines envisages a range of activities, such as the development of a system of data collection, including on the situation of Roma in various socio-economic areas (employment, education, healthcare and affordable housing), the conducting of surveys, training on non-discrimination for different target groups, improving methods to better identify discrimination, etc. The implementation of different activities is foreseen through different EU-funded programmes and bilateral financial instruments.

The Ministry of Welfare prepared the 2015-2017 Implementation Plan for the 'Guidelines for the implementation of the United Nations Convention on the Rights of Persons with Disabilities 2014-2020' (*Pamatnostādņu „Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām īstenošanas pamatnostādnes 2014.-2020.gadam” īstenošanas plāns 2015.-2017.gadam*).<sup>337</sup> On 15 December 2015, the plan was approved

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<sup>335</sup> Latvian Government (2013), *Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām īstenošanas pamatnostādnes 2014.-2020.gadam*, 22.11.2013, available in Latvian at [http://www.lm.gov.lv/upload/2013junijs/lmpamn\\_040613\\_inv.pdf](http://www.lm.gov.lv/upload/2013junijs/lmpamn_040613_inv.pdf).

<sup>336</sup> Latvia (2013), *Guidelines on National Identity, Civil Participation and Society Integration 2012-2018* (Nacionālās identitātes, pilsoniskās sabiedrības un sabiedrības integrācijas politikas pamatnostādnes 2012.-2018.gadam).

<sup>337</sup> Latvian Ministry of Welfare (*Labklājības ministrija*), '2015-2017 Implementation Plan for the Guidelines for implementation of the United Nations Convention on the Rights of Persons with Disabilities 2014-2020' (*Pasākumu plāns nākamajiem gadiem ANO Konvencijas par personu ar invaliditāti tiesībām īstenošanai*



by the Government. The plan aimed to facilitate a shift from a medical approach to a human rights-based social model, and focuses on four directions: education (including measures to facilitate access to education and inclusive education); work and employment (measures to facilitate the inclusion of persons with disabilities in the labour market, e.g. through subsidised employment schemes and developing the concept of social entrepreneurship, etc.); social protection (development of state-funded support services, with a strong emphasis on the beginning of de-institutionalisation); and public awareness (activities to raise public awareness about the rights of persons with disabilities). The plan set specific targets in all areas (e.g. numbers of beneficiaries), and set out specific funding. There has been no assessment of the results of the implementation plan covering 2015-2017 submitted by the Ministry of Welfare. A new plan covering the period 2018-2021 must be submitted to the Government by 1 July 2018.

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*Latvijā*), 15 December 2015, available in Latvian at:  
<http://tap.mk.gov.lv/lv/mk/tap/?pid=40365029&mode=mk&date=2015-12-15>.

## 10 CURRENT BEST PRACTICES

Activities organised by the Ombudsman's Office in co-operation with NGOs working with persons with disabilities aimed at raising public awareness about barriers faced by persons with disabilities, (e.g. consecutive annual surveys concerning accessibility to health care facilities, banks, higher educational establishments by persons with disability), an annual conference, annual awards to NGOs, and employers facilitating the social inclusion of persons with disabilities might be considered good practice. Guidelines to employers published by the Ombudsman's Office on reasonable accommodation for people with disabilities (mobility disability, vision or hearing impairments (total and partial loss), and autism spectrum disorder) towards the end of 2017 can also be considered good practice (see section 2.6 (c) above).<sup>338</sup>

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<sup>338</sup> Ombudsman's Office (Tiesībsargs) (2017), *Pielāgota darba vide darbiniekiem ar invaliditāti. Informatīvais materiāls darba devējiem*, p. 133, in Latvian at [http://www.tiesibsargs.lv/uploads/content/publikacijas/vadlinijas\\_dd\\_vides\\_pielagosana\\_1515490591.pdf](http://www.tiesibsargs.lv/uploads/content/publikacijas/vadlinijas_dd_vides_pielagosana_1515490591.pdf).

## 11 SENSITIVE OR CONTROVERSIAL ISSUES

### 11.1 Potential breaches of the directives (if any)

In relation to vocational training outside employment relationships, differential treatment is not adequately prohibited. The Law on Education contains a closed list of grounds that does not include age, disability or sexual orientation. As far as the application of the Law on Education in the private sector is concerned, there is nothing to make up for the missing grounds. There is no implementation mechanism in the law and no shared burden of proof. Similarly, amendments to the Law on Support to Unemployed Persons and Job Seekers covering access to vocational retraining apply to only three grounds, gender, race and ethnic origin, and so ignore Directive 2000/78.

Disability is defined as a long-term or non-transitional very severe, severe or moderate level of limited functioning, and is divided into three possible degrees of disability in accordance with the provisions of the Disability Law, depending on the gravity of the impairment. The issue may arise whether the concept of disability in the laws prohibiting discrimination covers only those disabilities that have received official qualification, in which case the person's status as disabled has consequently been officially recognised, or whether it covers any *de facto* disability. This can be problematic and can result in insufficient implementation unless the courts, when confronted with this issue, interpret the notion of disability in the laws prohibiting discrimination in a manner compatible with the CJEU case *Skouboe Werge and Ring*.<sup>339</sup>

In March 2015, the legal equality department of the Ombudsman's Office was closed down and the staff were assigned to other departments,<sup>340</sup> which raises the question of whether the office fulfils the minimum race equality requirements in practice. According to the office, 'considering that violations of the prohibition of discrimination in practice include violations of other rights (from the aspect of civil and political, social, economic, cultural or children rights), the Office does not collect separate statistics about discrimination complaints (those are included in the statistics of the above-mentioned legal departments.)'.<sup>341</sup> According to the Office, all staff are now required to have competence in non-discrimination issues.

As of 2014, NGOs are no longer entitled to represent a victim or victims of discrimination at the cassation court as it is reserved to the person participating in the case or to their advocate. This excludes the possibility of legal representation of victims of discrimination in civil claims by other persons with a law degree (e.g. NGO staff), who are not participants in the case and do not have the status of an advocate (defence counsel). However, this may impact on access to justice for certain vulnerable groups, including victims of discrimination, as cases of discrimination have predominantly been brought before the courts by NGOs. The amendments contravene the non-regression clauses of the equality directives (see section 4.2 of this report).

### 11.2 Other issues of concern

Since the transposition of Racial Equality Directive and the Employment Directive, there remains limited case law concerning discrimination on grounds of race/ethnic origin (1), disability (3), age (2), religion (0), and sexual orientation (0). Court cases on discrimination are not specifically recorded and remain unknown to the wider public.

There continues to be no national co-ordination on non-discrimination issues.

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<sup>339</sup> CJEU, joined cases C-335/11 and C-337/11, judgment of 11 April 2013.

<sup>340</sup> LR Tiesībsargs (2015), 'Staff'. Available at: <http://www.tiesibsargs.lv/en/about-us/darbinieki>.

<sup>341</sup> Email communication by the Ombudsman's Office to the Latvian Centre for Human Rights on 18 March 2016.

On the work of the equality body, the Ombudsman's Office remains complaints driven, and there is limited involvement in public awareness raising, conducting research or surveys. No public awareness raising activities, research or surveys concerning discrimination on grounds of race/ethnic origin, age, or sexual orientation have been carried out in the last decade.

## 12 LATEST DEVELOPMENTS IN 2017

### 12.1 Legislative amendments

There have been no new essential legislative anti-discrimination amendments or new laws adopted in 2017.

On 22 August 2017, the Cabinet of Ministers approved the draft law on the restriction of face covering<sup>342</sup> developed by the Ministry of Justice. The law is aimed at the banning of Islamic veils (burqa and niqab) in public places. According to the Ministry of Justice, the aim of the draft law is to ensure unity and harmony in the society, open communication between members of public and in living together. The law would impose a complete ban on wearing clothing covering the face in public places, excluding churches and prayer rooms and premises for religious activities. The law defines the meaning of 'public place' as applicable to the law. The draft law lists exceptions to the ban: when face covering is necessary for the execution of regulatory requirements; professional duties; participants of events and sports exercises; participants of artistic events; participants of state festivities and national cultural events; weather conditions; and health conditions. The law provides for administrative punishment for a breach of the ban.

The Ministry of Foreign Affairs objected to the draft law for its comprehensive ban and criticised the reference to conclusions applicable to France and Belgium (relevant ECtHR cases), and the failure of the drafters to assess the specific context applicable to Latvia. The Ministry of Foreign Affairs also pointed to the absence of a comprehensive assessment of the threat to the constitutional values of Latvia and the need for restrictions given the small number of people who would face restrictions as a result of the law.<sup>343</sup> As reported by the national news agency LETA, the Minister of Justice, Dzintars Rasnačs, highlighted that the 'main aim of the law is prevention, so that people know beforehand that they will have to observe the rules of our cultural historical environment.'<sup>344</sup>

By the year's end, the draft law had not been passed in the first reading as the parliamentary Human Rights and Public Affairs Commission has postponed its review. The Parliament's legal office, in its opinion of 9 November submitted to the commission advised it not to support the draft law in the first reading for lack of sufficient justification to conclude that the restrictions set out in the draft law are proportionate and in compliance with the Constitution and the European Convention on Human Rights.<sup>345</sup>

There have been no new legal developments that have had an effect on the situation of migrants with regard to their rights in Latvia in 2017.

### 12.2 Case law

There is one known discrimination case in 2017, on the ground of disability concerning discriminatory dismissal. There has been no case law concerning migrants with regard to their rights under the national legislation transposing the EU anti-discrimination directives.

<sup>342</sup> Cabinet of Ministers (*Ministru kabinets*), draft law: Law on the Restriction of Face Covering (*Likumprojekts "Sejas aizsegšanas ierobežojuma likums"*), at <http://tap.mk.gov.lv/lv/mk/tap/?dateFrom=2016-10-04&dateTo=2017-10-04&text=Sejas+aizseg%C5%A1anas+ierobe%C5%B6ojuma+likums&org=0&area=0&type=0> (last accessed 4 January 2018).

<sup>343</sup> Ministry of Foreign Affairs (*LR Ārlietu ministrija*), Letter to the Prime Minister L. Straujuma Nr. 3/0243 – 3606, 7 September 2015.

<sup>344</sup> LETA (2017), 'No Wearing of Face Covering Clothing in Public Places' (*Publiskās vietās nedrīkstēs nēsāt seju aizsedzošus apģērbus*), 22 August. (available to subscribers only).

<sup>345</sup> Saeima Legal Office (*Juridiskais birojs*), Opinion Concerning the Draft Law on the Restriction of Face Covering to the Saeima Human Rights and Public Affairs Commission, Nr. 111.13/1-201-12/17, 9 November 2017. Available at: <http://titania.saeima.lv/LIVS12/saeimalivs12.nsf/0/FA101D8A9AE710E2C22581D40027F490?OpenDocument> (last accessed 4 January 2018).

**Name of the court:** Riga Regional Court Civil Cases Court Collegium (*Rīgas apgabaltiesas Civillietu tiesas kolēģija*)

**Date of decision:** 17 August 2017

**Earlier court decisions:** Riga District Court Jurmala Court House (*Rīgas rajona tiesa Jūrmalas tiesu nams*), 27 May 2016; Riga Regional Court Civil Cases Court Collegium (*Rīgas apgabaltiesas Civillietu tiesas kolēģija*), 26 December 2016, Supreme Court Civil Cases Department (*Augstākās tiesas Civillietu departaments Rīcības sēdes lēmums*), 30 June 2017), reference number SKC – 1097/2017.

**Name of the parties:** E.K. vs Rīgas nami (LLC)

**Reference number:** C33533415

**Address of the webpage:** -

**Brief summary:** The parties Rīgas nami (LLC Rīgas nami) and E.K., who has a physical disability, entered into a labour contract on 8 March 2011 and E.K. was hired as a client service specialist. In September 2013, the parties amended the contract and E.K. became the manager of Rīgas mākslas telpa (Rīga Art Space), which was transferred to the Riga City Council. On 30 January 2015, the employer took a decision on reorganisation and terminated E.K.'s position and two other manager positions. On 28 May 2015, the employer issued a decision on E.K.'s work stoppage as it claimed that there were no suitable vacancies to offer to E.K. The Labour Law (Article 109.2) prohibits the dismissal by an employer of an employee with a disability except for specific cases determined by the law. In June 2015, the employer sent a letter requesting explanations from E.K. regarding complaints she had submitted concerning her treatment, and subsequently drafted a (disciplinary) act on the non-provision of explanations by E.K.

In August 2015, the employer lodged an application in civil procedure before the court asking to terminate labour relations with E.K. The defendant filed a counterclaim asking the court to impose an obligation on the employer to propose suitable alternative positions to her, in accordance with her qualifications and capabilities, to admit the breach of the principle of prohibition of discrimination and victimisation [on the ground of disability] and to grant compensation for moral (non-pecuniary) damage. E.K. claimed that after the transfer of the Riga Art Space to the City Council, her working conditions had, due to her physical disability, deliberately been made worse, and she was subject to offensive statements and that the employer's request for explanations regarding her complaints amounted to victimisation.

**Decision of the Court:** In its decision of 22 December 2016, the Riga Regional Court rejected the employer's claim and partly satisfied E.K.'s counterclaim, finding a violation of the prohibition of discrimination and victimisation and ordered the company to provide E.K. with work according to her capabilities and qualifications. The court awarded EUR 1 000 for non-pecuniary damages. The employer subsequently appealed the decision, however on 30 June 2017, the Supreme Court dismissed the complaint. On 31 July 2017, the employer submitted a petition before the Riga Regional Court requesting the suspension of the enforcement of the part of the judgment obligating the company to provide E.K. with work according to her qualifications and capabilities. In its decision on 17 August 2017, the court rejected the claim of the company.

The court noted that the claimant had terminated the labour relations based on Article 101.1.9 (the number of employees is being reduced) and Article 101.5 (on an exceptional basis with good cause) of the Labour Law. The court however noted that the defendant is a person with established disabilities (of which the claimant had been informed well before the court hearing), and the aforementioned articles are not mentioned in Article 109.2 of the Labour Law, which provides an exhaustive list of the legal grounds for the termination of labour relations with persons with disabilities. The court reiterated that the list of grounds in Article 109.2 should be considered as exhaustive, and no one, including the court, is entitled to interpret it in a broader way. Regarding possible discrimination on the ground of disability, the court applied Article 20 of the Labour Law which provides for the shift of the burden of proof to the employer, i.e., the claimant. The court stated that Rīgas

Nami had not submitted any evidence against the defendant's statements concerning her discrimination, including demeaning working conditions and offensive statements (suggesting that the employer did not need such workers). The court also established that the claimant's decision to request explanations from the defendant about her complaints to officials and institutions concerning her case were strictly connected to the fact that the employee had exercised her rights in a permissible manner. This led to the termination of the contract and the court found that it amounted to victimisation. The court also found contradictions in the claimant's statement regarding vacancies during the defendant's work stoppage and that the employer had at least one appropriate vacancy for the defendant.

There remain few discrimination cases on the ground of disability before courts in Latvia. The first instance court did not establish discrimination and victimisation on the ground of disability.

## ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

**Country:** Latvia  
**Date:** 1 January 2018

<b>Title of legislation (including amending legislation)</b>	Title of the law: Labour Law [Darba likums] Abbreviation: Date of adoption: 20.06.2001 Latest amendments: 27.07.2017 Entry into force: 01.06.2002 Web link: <a href="http://likumi.lv/doc.php?id=26019">http://likumi.lv/doc.php?id=26019</a> Grounds covered: Race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation "or other circumstances"
	Civil/administrative/criminal law: Civil
	Material scope: Employment relationships proper (civil service and specialized civil service excepted)
	Principal content: Prohibition of discrimination in relation to all aspects of employment relationships; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment
<b>Title of legislation (including amending legislation)</b>	Title of the law: State Civil Service Law [Valsts civildienesta likums] Abbreviation: Date of adoption: 07.09.2000 Latest amendments: 16.03.2017 Entry into force: 01.01.2001 Web link: <a href="http://likumi.lv/doc.php?id=10944">http://likumi.lv/doc.php?id=10944</a> Grounds covered: Grounds not specified
	Civil/administrative/criminal law: administrative
	Material scope: Civil service relationships
	Principal content: Application of Labour Law provisions on protection against discrimination to civil service relationships
<b>Title of legislation (including amending legislation)</b>	Title of the law: Law on Prohibition of Discrimination of Natural Persons-Economic Operators [Fizisko personu – saimnieciskās darbības veicēju diskriminācijas aizlieguma likums] Abbreviation: Date of adoption: 19.12.2012 Latest amendments: - Entry into force: 02.01.2013 Web link: <a href="http://likumi.lv/doc.php?id=253547">http://likumi.lv/doc.php?id=253547</a> Grounds covered: Gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin
	Civil/administrative/criminal law: Civil
	Material scope: Access to self-employment; access to goods and services of a self-employed person
	Principal content: Prohibition of discrimination in access to self-employment; access to goods and services of a self-employed person; prohibition and definition of victimization
<b>Title of legislation (including amending legislation)</b>	Title of the law: Law on Social Security [Likums par sociālo drošību] Abbreviation: Date of adoption: 07.09.1995 Latest amendments: 29.10.2015 Entry into force: 05.10.1995 Web link: <a href="http://likumi.lv/doc.php?id=36850">http://likumi.lv/doc.php?id=36850</a>



	<p>Grounds covered: Race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: Social services - measures ensured by state or municipality as monetary or material support or other services to promote the full realization of person's social rights</p> <p>Principal content: Prohibition of differential treatment in provision of social services; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment</p>
<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: Law on Education [Izglītības likums]</p> <p>Abbreviation:</p> <p>Date of adoption: 29.10.1998</p> <p>Latest amendments: 22.11.2017</p> <p>Entry into force: 01.06.1999</p> <p>Web link: <a href="http://likumi.lv/doc.php?id=50759">http://likumi.lv/doc.php?id=50759</a></p> <p>Grounds covered: Property and social status, race, ethnic origin, gender, religious and political belief, state of health, employment and place of residence</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: Access to education</p> <p>Principal content: Prohibition of discrimination in access to all types of education, prohibition of victimisation, reversal of burden of proof</p>
<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: Consumer Rights Protection Law [Patērētāju tiesību aizsardzības likums]</p> <p>Abbreviation:</p> <p>Date of adoption: 18.03.1999</p> <p>Latest amendments: 18.06.2015</p> <p>Entry into force: 15.04.1999</p> <p>Web link: <a href="http://likumi.lv/doc.php?id=23309">http://likumi.lv/doc.php?id=23309</a></p> <p>Grounds covered: Gender, race, ethnic origin, disability</p> <p>Civil/administrative/criminal law: Civil</p> <p>Material scope: Access to goods and services</p> <p>Principal content: prohibit discrimination in access to goods and services; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment</p>
<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: the Law on Ombudsman [Tiesībsarga likums]</p> <p>Abbreviation:</p> <p>Date of adoption: 06.04.2006</p> <p>Latest amendments: 25.09.2014</p> <p>Entry into force: 01.01.2007</p> <p>Web link: <a href="http://likumi.lv/doc.php?id=133535">http://likumi.lv/doc.php?id=133535</a></p> <p>Grounds covered: Not specified</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: legal status, functions and tasks of the Ombudsman, as well as the procedures by which the Ombudsman shall perform the functions and tasks specified by the Law</p> <p>Principal content: Entrusts the ombudsman with promotion of observation of the principle of equal treatment and elimination of all kinds of discrimination</p>
<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: Law on Organisations and Foundations [Biedrību un nodibinājumu likums]</p> <p>Abbreviation:</p> <p>Date of adoption: 30.10.2003</p> <p>Latest amendments: 02.11.2017</p> <p>Entry into force: 01.04.2004</p>

	Web link: <a href="http://likumi.lv/doc.php?id=81050">http://likumi.lv/doc.php?id=81050</a>
	Grounds covered: Not specified
	Civil/administrative/criminal law: Civil
	Material scope: principles for the activity, organisational structure, liquidation and re-organisation of associations and foundations
	Principal content: Right on behalf of the victim to turn to the state institutions and courts in order to protect the rights and legal interests of the person in cases related to the violation of the prohibition of differential treatment

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Country:** Latvia  
**Date:** 1 January 2018

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Dd/mm/yyyy</b>	<b>Date of ratification (if not ratified please indicate) Dd/mm/yyyy</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	10.02.1995	27.06.1997	No	Yes	Yes
Protocol 12, ECHR	4.11.2000	No	No	Yes	Yes
Revised European Social Charter	29.05.2007	26.03.2013	Article 12 para 4	Ratified collective complaints protocol? No	Yes
International Covenant on Civil and Political Rights	N/A	14.04.1992	No	Yes	Yes
Framework Convention for the Protection of National Minorities	11.05.1995	06.06.2005	No, but definition of minority	N/A	Yes
International Covenant on Economic, Social and Cultural Rights	N/A	14.04.1992 (27.01.1992 – ILO database)	No		Yes
Convention on the Elimination of All Forms of Racial Discrimination	N/A	14.04.1992	No	No	Yes
Convention on the Elimination of Discrimination	N/A	14.04.1992	No	No	Yes

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Dd/mm/yyyy</b>	<b>Date of ratification (if not ratified please indicate) Dd/mm/yyyy</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
Convention Against Women					
ILO Convention No. 111 on Discrimination	N/A				Yes
Convention on the Rights of the Child	N/A	14.04.1992	No		Yes
Convention on the Rights of Persons with Disabilities	18.06.2008 Optional protocol signed 22.10.2010	01.03.2010 Ratified 31.08.2010	No	Yes	Yes

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